

Bath and North East Somerset Council

Care and Support Charging and Financial Assessment Framework

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1. Summary

The document is designed to be used by you, the service user, or your representative. The Council has, where possible, used plain English. Care and Support is not a free service and many services are subject to charge. Local authorities are required to carry out a financial assessment to calculate what an individual can afford to pay towards their care, although The Council does retain a general discretion in respect of charging.

Payments towards the cost of care are paid to the care provider if you are assessed as self-funding and paid to the Council if you are assessed as making an assessed care charge towards the cost of your care (unless you receive a Direct Payment when you will pay the care provider directly.)

This Framework sets out the Council's policies for charging for care and support and follows the Care Act 2014, Care and Support Statutory Guidance issued by the Government under the Care Act 2014, Care and Support (Charging and Assessment of Resources) Regulations 2014, Care and Support (Deferred Payments) Regulations 2014, Care and Support (Direct Payments) Regulations 2014, Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 and the Care and Support (Preventing Needs for Care and Support) Regulations 2014.

2. Legal Context

The Care Act 2014 – Charging and Financial Assessment

Section 14 of the Care Act 2014 gives the Council the power to charge adults for care and support. This applies where adults are being provided with care and support to meet needs identified under Section 18, Section 19 or Section 20 of the Care Act 2014. These needs can be referred to as 'identified needs' or 'eligible needs'.

When developing and applying policies the Council must take note of the following documents;

- Care and Support Statutory Guidance; issued by the Department of Health giving detailed guidance to Councils on all aspects of the Care Act 2014, including Charging and Financial assessment (Chapter 8), Deferred payments (Chapter 9) and associated annexes to the guidance, for example:
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>
 - Annex A: Choice of Accommodation and Additional Payments
 - Annex B: Capital Limits, Financial Assessment and Treatment of Capital and Income
 - Annex C: Deprivation of Assets
 - Annex D: Deferred Payment Agreements
 - Annex E: Recovery of Debts
 - Annex F: Temporary and Short term residents in Care Homes

- The Care and Support (Charging and Assessment of Resources) Regulations 2014; which sets out:
<http://www.legislation.gov.uk/uksi/2014/2672/contents/made>
 - The power to charge for certain types of care and support (Part 2);
 - The duty under Section 17 of the Care Act to carry out a financial assessment (Part 3);
 - Rules on the treatment and calculation of income and capital (including notional income and capital and deprivation) (Part 4 and 5);
 - Rules on sums to be disregarded (Schedule 1 and 2).
- The Care and Support (Deferred Payments) Regulations 2014; which sets out: <https://www.legislation.gov.uk/uksi/2014/2671/contents/made>
 - The rules on when the Council must enter into a deferred payment agreement (regulation 2);
 - The rules on when the Council may enter into a deferred payment agreement (Regulation 3);
 - The rules on the security required and equity limit (Regulations 4 and 5);
 - The power to charge interest and administration costs (Regulation 9 and 10).
- The Care and Support (Direct Payments) Regulations 2014; which sets out: <https://www.legislation.gov.uk/uksi/2014/2871/contents/made>
 - Conditions for making a Direct Payment (Regulation 3 and 4);
 - Steps the Council must take before making a Direct payment under Section 32 of the Care Act (Regulation 5);
 - Direct payment and Care Home accommodation (Regulation 5);
 - The Councils obligation to review Direct Payments (Regulation 7);
 - The Rules on Capacity (Regulation 8 and 9).
- The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014; which sets out: http://www.legislation.gov.uk/uksi/2014/2670/pdfs/uksi_20142670_en.pdf
 - The Councils obligation on respect of the choice of accommodation (Regulation 2);
 - The preferred accommodation conditions (regulation 3);
 - The payment of additional costs for the preferred accommodation (Regulation 5).
- The Care and Support (Preventing Needs for Care and Support) Regulations 2014; which sets out: http://www.legislation.gov.uk/uksi/2014/2673/pdfs/uksi_20142673_en.pdf
 - The Councils obligations in respect of prevention of care and support
 - Community equipment (Regulation 2)
 - Providing care and support for reablement and intermediate services (Regulation 4)

Future Changes to care Funding (2020)

The Care Act (Section 15 and 16) proposes a cap on care costs which limits how much a person would be required to pay towards their support needs over their

lifetime and increases the level of capital a person can have and still receive financial assistance with care and support costs.

In July 2015 the government announced the implementation of Funding Reforms would be delayed until 2020. However the Government have since announced proposals¹ for long-term social care reforms to be published for public consultation and will not take forward the proposed cap on care costs set out in the Care Act.

The Government continues to review social care funding, the latest report was published on the 19th June 2018.²

3. Principles Of This Framework

The Development and Review of this Charging and Financial Assessment Framework

When the government introduced the Care Act 2014 the Council as part of implementing this new legislation developed a Charging and Financial Assessment Framework.

The Framework will be reviewed regularly as set out later in this document – Reviewing this Charging and Financial Assessment Framework.

National Principles of Charging and Financial Assessment

This Charging and Financial Assessment Framework has been developed to meet national principles to;

- Ensure that people are not charged more than is statutorily permissible for them to pay for care and support;
- Be comprehensive – to reduce variation in the way people are assessed and charged;
- Be clear and transparent – so people know what they will be charged;
- Promote wellbeing, social inclusion and support the vision of personalisation, independence, choice and control;
- Support carers to look after their own health and wellbeing and to care effectively and safely;
- Be person focused – reflecting the variety of care and options available to meet needs;
- Apply the charging rules consistently – so those people with similar needs or services are treated the same and anomalies are minimised;
- Be sustainable for the Council in the long term.

¹ In November 2017 the Government announced proposals to reform social care and support. In December 2017 the Parliamentary Under-Secretary of State for Health announced that the Government would not be taking forward the cap on care costs set out by the previous Government. This announcement can be viewed at <https://hansard.parliament.uk/commons/2017-12-07/debates/F7AD5D1D-C8D6-411D-BF42-B432955B2A8E/SocialCare>

² <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/768/768.pdf>

4. Care and Support Services Provided Free Of Charge

Assessments of needs and care are always provided free of charge, and Councils are not permitted to charge for any service or part service which the National Health Service (NHS) is under a duty to provide – this includes Continuing Healthcare and Funded Nursing Care.

All Councils must provide the following care and support services free of charge:

- Care from the integrated reablement and Intermediate service – a short period of intensive therapies and support from health and social care professionals to assist and promote regaining independence. Intermediate care services may continue for up to 6 weeks without charge³.
- Through the Councils partnership with VirginCare all community equipment and minor adaptations services where the minor adaptation costs up to £1,000 to help with independent living⁴
- Care and Support provided to people with Creutzfeldt-Jacob Disease⁵
- After-care services / support provided under Section 117 of the Mental Health Act 1983
<https://www.legislation.gov.uk/ukpga/1983/20/part/VIII/crossheading/aftercare>

The Council has also chosen to provide the following service free of charge:

- Payment to a carer of an adult in receipt of care, this payment will be based on a care and support assessment

Failure To Allow A Care And Needs Assessment

The assessment and eligibility process is one of the most important elements of the care and support system. The assessment is one of the key interactions between you the Council⁶.

The assessment is collaborative and the Council will aim to make the process transparent and understandable⁷. You may refuse a care and needs assessment but if you chose to do so, or do not engage in the assessment⁸ the Council will not provide funding and you will need to arrange your own care and support.

5. Chargeable Care And Support Services

Charges for the following services are based on an assessment of your financial circumstances – for details see below and the Council Guides available on-line.

³ Clause 4 of the Care and Support (Preventing Needs for Care and Support) Regulations 2014

⁴ Clause 2 of the Care and Support (Preventing Needs for Care and Support) Regulations 2014.

⁵ Clause 8.41 of the Care and Support (Statutory Guidance)

⁶ Clause 6.1 – 6.8 of the Care and Support (Statutory Guidance)

⁷ Clause 6.35-6.43 of the Care and Support (Statutory Guidance)

⁸ Clause 6.20 and 6.21 of the Care and Support (Statutory Guidance)

The Council will carry out a financial assessment. If the Council is aware (when your need for care and support arises) that you have capital above the Upper Capital Limit⁹, the Council will not carry out a financial assessment and will assess you as able to pay the full charge for your care home accommodation or provision of care service.

If your capital is mostly due to ownership of a property there are rules around whether this counts within the financial assessment see part 10.

If your capital is below the Upper Capital Limit¹⁰ or the Council cannot identify the level of capital you hold, the Council will carry out a financial assessment to work out your assessed weekly charge you will need to pay towards your care home accommodation or provision of care services.

Currently, your weekly assessed care charge is paid every week at the same amount as per your financial assessment. It is possible, in the future, that the Council may alter the charging framework to allow a more flexible approach to the provision of care and meet outcomes. This will mean that you will have a financial assessment to calculate your weekly care charge but this charge will be invoiced over a 4 week period.

If the Council alters the invoicing period to 4 weekly you will never be charged more than your assessed weekly care charge but you might be charged less.

For example if your assessed weekly care charge is £100 per week over 4 weeks this is £400, if you total cost of care over the 4 weeks is £800 you will pay £400, if your total cost of care over 4 weeks is £350 you will pay £350.

Young persons

Prior to a young person reaching 18 they are entitled to a Transitions Assessment by a social worker, Where a Transition Assessment identifies needs that are likely to be eligible, local authorities should consider providing an indicative Personal Budget so that young people have an idea of how much their care and support will cost when they enter the adult system.

During this assessment their family or carer(s), as part of the preparation for the young person to transition to adulthood, will be given the opportunity to start to explore and discuss some of the changes to the provision of the care and support the young person may encounter as they transition to adulthood.

When a young person reaches 18 they will be assessed by a social worker under Section 18, Section 19 or Section 20 of the Care Act 2014 and their eligible needs will be identified.

Section 14 of the Care Act 2014 gives the Council the power to charge adults for care and support.

⁹ See Annex B – Capital Limits Schedule

¹⁰ See Annex B – Capital Limits

So that the transition from child services to adult services, in respect of charging, is as straightforward as possible the social worker will establish prior to the young person's 18th birthday if they have capacity.

If the young person has capacity a referral will be made to the Client Finance team and a Care Finance Officer will arrange to meet with the young person and their parent or carer, the Care finance Officer will bring to this meeting a Calculation of Financial Charge form for completion and will also assist with signposting the young person and parent or carer to possible benefit entitlement. If a meeting is not possible the Care Finance Officer will post the Calculation of Financial Charge form.

The Care Finance Officer will use the Calculation of Financial Charge form to calculate the assessed weekly charge. This form can be signed by the parent or carer but will be left with the young person for signature and return on or after their 18th birthday (this can be returned by post or electronically). Upon receipt of the signed Calculation of Care Charge form the Care Finance Officer will confirm the assessed weekly charge amount to the young person by letter.

If the young person has capacity but wishes to appoint a parent or carer to act on their behalf they can indicate this on the Calculation of Financial Charge form.

If the young person lacks capacity a referral will be made to the Client Finance team and a Care Finance Officer will arrange to meet with the young person's family or carer. The Care Finance Officer will bring to this meeting a Calculation of Financial Charge form for completion and will also assist with signposting the family or carer to possible benefit entitlement. If a meeting is not possible the Care Finance Officer will post the Calculation of Financial Charge form.

The Care Finance Officer will use the Calculation of Financial Charge form to calculate the assessed weekly charge, this form can be signed by the parent or carer subject to the parent or carer having a DWP appointee notice. The Care Finance Officer will confirm the assessed weekly charge amount to the parent or carer by letter.

If the young person lacks capacity the parent or carer will need to apply for Deputyship as soon as possible after the young person's 18th birthday, this process can take up to 6 months to complete, to allow the financial assessment to be carried out the Care Finance Officer will accept, whilst the Deputyship Order is awaited, evidence that the parent or carer has been appointed as a DWP appointee. The Care Finance Officer will require the Deputyship order to be provided within 9 months of the young person's 18th birthday.

Some young people may be in receipt of an Education, Health and Care plan; this plan can remain in place up to the age of 25, subject to the Local Authority agreeing that the young person can remain in education and it can be shown that the young person will make progress.

For most young people any social care support will be provided by their home local authority¹¹. The young person has the right to request a transition assessment for

¹¹ Chapter 8 of the Care Act 2014 and page 134 of the SEN Code of Practice.

adult care that will enable them to see whether they are likely to have eligible needs that will be met by adult services once they turn 18.

Young people with Special Educational Needs turning 18, or their carers, may become eligible for adult care services, regardless of whether they have an Education Health and Care Plan or whether they have been receiving care services under section 17 of the Children Act 1989.

If the young person with Special Educational Needs or an educational Health and Care Plan is identified as having eligible needs a financial assessment for the social care element of any funding will be carried out. The process will be the same as that outlined above.

Residential Care

You will pay your assessed care charge towards the costs of your care and support from the date you enter the care home (subject to your financial assessment and your capital assets).

If you have capital above the Upper Capital Limit¹² the Council will assess that you are able to pay the full cost of your care in the care home.

If your capital is below the Upper Capital Limit or the Council cannot identify the level of capital you hold, the Council will carry out a financial assessment. The rules for this assessment will be those used for permanent residence.

Short term / Respite stay(s) in care home accommodation

Short term stays are up to 56 nights in any 12 month period¹³

Respite stays up to 4 consecutive weeks in any 12 month period and provide a break for informal carers. These costs can be paid using a direct payment¹⁴

If you have capital above the Upper Capital Limit¹⁵ the Council will assess that you are able to pay the full cost of your short term / respite stay in a care home.

If your capital is below the Upper Capital Limit or the Council cannot identify the level of capital you hold, the Council will carry out a financial assessment. The rules for this assessment will be those used for temporary stays (see below)¹⁶.

If your placement is an emergency the Council will still carry out a financial assessment. The rules for this assessment will be those used for temporary stays (see below)¹⁷.

¹² See Annex B – Capital Limits

¹³ See Clause 8.34 of the Care and Support Statutory Guidance

¹⁴ See Clause 12.41-12.43 of the Care and Support Statutory Guidance

¹⁵ See Annex B – Capital Limits

¹⁶ See Clause 8.34 of the care and Support Statutory Guidance

¹⁷ See Clause 8.34 of the care and Support Statutory Guidance

If the respite / short term stay exceeds 28 / 56 nights during a year the Council will carry out a financial re-assessment using the Financial Assessment and Charging Rules for temporary stays (see below).

Temporary stays(s) in Care home accommodation

Temporary stays are intended to last for a limited period where there is a plan to return home. The stay should be unlikely to exceed 52 weeks¹⁸.

If you have capital above the Upper Capital Limit¹⁹ the Council will assess that you are able to pay the full cost of your temporary stay in a care home.

If your capital is below the Upper Capital Limit or the Council cannot identify the level of capital you hold, the Council will carry out a financial assessment to calculate your assessed weekly charge.

This assessment will be carried out using the rules for temporary stays in care homes²⁰

The rules include but are not limited to the following:

- Your main or only home will be disregarded where you intend to return to the property or you have taken steps to dispose of the property to acquire a property that is more suitable.
- The assessment will be carried out in accordance with the rules for permanent residents²¹ but an allowance is made for any additional amounts required to maintain the home:
 - Gas (standing charge only – non-mains: Oil only delivery costs)
 - Electricity (standing charge only)
 - Water (standing charge only)
 - Council tax
 - Mortgage (if applicable)
 - Rent
 - Ground rent (if applicable)
 - Service charge (if applicable)
 - Home Buildings and contents insurance²² (subject to evidence being provided of the amount being paid)

Non-Residential Care and Support

Non-Residential care and support means care and support services provided to help you stay in your own home and involved in the community.

Depending on your financial circumstances you may be asked to pay a charge towards your non-residential care and support costs.

¹⁸ See Annex F Clause 4 of the Care and Support Statutory Guidance

¹⁹ See Annex B – Capital Limits

²⁰ See Annex F Clauses 10-20 of the Care and Support Statutory Guidance

²¹ See Annex C of the care and Support Statutory guidance

²² See Annex C Clause 49 of the care and Support Statutory guidance

If you have capital above the Upper Capital Limit²³ the Council will assess that you are able to pay the full cost of your care services.

If your capital is below the Upper Capital Limit or the Council cannot identify the level of capital you hold, the Council will carry out a financial assessment to calculate your assessed weekly charge.

If your social care assessment shows you have ongoing eligible care and support needs you will be allocated a Personal Budget.

Your Personal budget may be used to purchase a range of care and support services. This includes commissioned services and services purchased through Direct Payments²⁴.

Services include:

- Personal Assistants – People employed to assist with all aspects of daily living including personal care and social activities
- Home / Domiciliary care – personal care in person's own home to help with washing, dressing, eating / drinking to maintain independent living
- Day care – an opportunity to meet other people and take up new opportunities
- Transport – To and from social care / day centres if this is included in your care and support plan (unless you are in receipt of Disability Living Allowance or any Disability Living Allowance component of PIP)
- Telecare – helps people to live independently in their homes by providing technological help for example sensors and alarms
- Supported living – a combination of all of the above usually provided by a single service provider
- Other types of support – some people may choose to use their personal budget to meet their social care needs in a different way eg by buying a computer to assist with on-line shopping (to replace the need for domestic help) or a piece of assistive technology to prevent the need for home care intervention.

6. Care And Support Financial Assessment Policy

This Financial Assessment Policy sets out the national and internal local Council rules that we use to work out how much an individual can afford to pay towards the costs of the Care and Support services provided to them.

It has been drawn up in accordance with the Care and Support (Charging and Assessment of Resources) Regulations 2014 and the Care and Support Statutory Guidance which are issued under Section 17 of the Care Act 2014.

Information that applies to all financial assessments for all care and support settings.

²³ See Annex B – Capital Limits

²⁴ See Part 9

What is a Financial Assessment for care and support?

A financial assessment is a calculation of the charge you will be required to pay towards the costs of your care²⁵

If you have capital assets above the Upper Capital Limit²⁶ you will be required to pay the full costs of your care and support.

If your capital assets are below the Upper Capital Limit or the Council cannot identify the level of capital you hold we will carry out a financial assessment and ask you to tell us about:

- Your income – how much money you have coming in
- Your capital assets – your savings, investments, land and property

We then work out how much you can statutorily keep for personal use²⁷.

We use this information to calculate your Assessed Weekly Charge. This is the most you would be asked to pay towards your care and support and is subject to review. If your care and support costs are less than your Assessed Maximum Weekly Charge you will be required to pay the full costs of your Care and Support.

Your Assessed Weekly Charge will change when your financial situation changes, for example if your income or savings change. We will review your financial assessment in line with any changes in your circumstances.

If the service you receive is an after-care service under Section 117 of the Mental Health Act 1983 you will not require a financial assessment.

If your care and support service is fully paid for by the NHS under Continuing Healthcare you will not require a financial assessment.

Capital Limits

The Government sets Upper and Lower Capital Limits to provide statutory guidance to Councils on when a person can afford to pay a charge towards their care and support. Annex B – Capital Limits Schedule shows the current Upper and Lower Capital Limit. The Limits are reviewed by the Government every year.

What is Capital

Capital resources are assets such as money in a bank or building society account, investments, stocks and shares, buildings, land etc.

Some capital is disregarded by the financial assessment and the details of this are set out in the Care Act, Regulations and Guidance²⁸

²⁵ Section 14 of the Care Act 2014

²⁶ See Annex B Capital Limits

²⁷ See Annex B Calculating Your Charge

If your total capital is less than the Lower Capital Limit you will pay any assessed charge based on your income only.

If you have a partner and you hold a capital asset in joint names you will be treated as having a 50% share of that capital asset.

If your capital assets are above the Upper Capital Limit you will be treated as self-funding and will be required to pay the full cost of your care and support. We can support you to arrange your own care.

If you do not live in a care home, you have the right to ask the Council to arrange your care and support. The Council will charge you the full costs of your care and support.

If after a financial assessment the value of your assets is assessed to be below the Upper Capital Limit but more than the Lower capital Limit you will be required to pay a charge from your capital, this is called tariff income Annex B – Capital Limits Schedule shows how the tariff income is calculated.

If after a full financial assessment or where the Council has already concluded your assets are below the lower capital Limit you will be required to pay a charge based on your income.

Notional capital

If you deprive yourself of capital assets in order to reduce or avoid charges for care and support we may complete your financial assessment as if you still had those assets. The value of those assets is known as notional capital. For more information see Deprivation of Assets.

²⁸ The Care and Support (Charging and Assessment) Regulations 2014 Part 3(12), Part 5, Schedule 1, Care and Support Statutory Guidance Annex B and Annex C, also See Annex B

How is a Financial Assessment carried out²⁹

1. If your care and support assessment shows that you need an ongoing care service, your Adult Social Care social worker will refer you to our Client Finance Team to request a financial assessment to be carried out with you (or your financial representative if you have one – such as a lasting power of attorney or deputy).



2. A Care Finance Officer will contact you, usually by phone, to arrange a visit to ask you about your financial situation. See example of information needed for your financial assessment (Annex C).
3. The Care Finance Officer will use the Councils Charging and Financial Assessment policy and the national Care and Support (Assessment of Resources) Regulations to work out a maximum amount you can afford to pay towards your care and support. The Care Finance Officer will ask you to sign the Financial Assessment form to confirm that the information provided is correct.

If the Client Officer cannot contact you or a visit cannot be arranged the Council will take the view that you are self-funding and you will be required to pay the full charge of your care and support.



4. The Care Finance Officer will explain to you if any further information is required and agree with you when this will be provided. The Care Finance Officer will check that you are receiving the benefits you are entitled to.



5. If you are moving into a care home permanently and you have a property the capital in that property will be taken into account in the financial assessment. The Care Finance Officer will ask you to provide details about the property and explain the possible funding arrangements, including the Councils Deferred Payment Agreements (see Section 10.) You should always seek independent advice before making a decision on how to use your capital assets.



6. The Care Finance Officer will send you a letter with the outcome of the financial assessment confirming what you will need to pay towards your care and support costs (if any). If you disagree with the outcome, you can appeal. See Appeals, Exceptional Circumstances and Waivers.

²⁹ See the Councils Guide Working Out Your Care charges Annex A and Sample form Annex C

Light Touch Financial Assessment

There are some situations where the Council will not need to carry out a full financial assessment of your ability to pay towards your care and support. Instead a 'light touch' financial assessment will be completed (a Care Finance Officer will contact you to confirm this). You can still ask the Council to carry out a full financial assessment.

Examples of when a 'light touch' assessment may be carried out:

- Your capital assets are above the Upper Capital Limit – if you know that your capital assets are above the Upper Capital Limit you will not need a full financial assessment. A Care Finance Officer will contact you to confirm that you are assessed to pay the full charge of your care and support.
- You have declined to provide information about your financial situation- if you do not wish to provide information about your financial situation you do not have to. A Care Finance Officer will contact you to confirm that you will be assessed to pay the full charge of your care and support.

If your financial assessment is a 'light touch' financial assessment, the Care Finance Officer will write to you to confirm;

- What you have been assessed to pay towards your care and support and the basis of the financial assessment
- That you can ask them to complete a full financial assessment at any time

Start date of Charges

Your charge will start from the date your care and support services commenced.

Your care charge will be backdated to the date your placement commenced; you should ensure you retain sufficient monies to pay this sum.

See also Financial Assessment Reviews.

Welfare Benefit Entitlements

As part of the financial assessment our Client Finance Officers will offer you a full benefits check.³⁰

What happens if you are possibly entitled to additional welfare benefits? The Care Finance Officer will signpost you to contact the Department of Work and Pension (DWP) or a third party agency (such as Age UK) who can then assist you with applying for any additional benefits to which you may be entitled.

What happens if you already receive welfare benefits? The Care Finance Officer will check the amount you are receiving and the breakdown of the benefits.

³⁰ In accordance with The Social Security (information-sharing in relation to Welfare Services etc.) Regulations 2012, made using powers under sections 130 and 131 of the Welfare Reforms Act 2012.

What happens if you are entitled to additional welfare benefits or a reassessment of welfare benefits? If you become entitled to additional benefit this will affect your financial assessment. The Care Finance Officer will confirm to you in writing the new charge you will be required to pay towards your costs of care and support. If your entitlement to the new welfare benefit is backdated the charge will be backdated to the same date or to the date your care and support started if this is later.

What happens if you choose not to apply for benefits you are entitled too? If you decide not to apply for a welfare benefit that you are entitled to and the Council is satisfied that the benefit income would have been available to you if you had made the application for that benefit we will consider that benefit income as 'notional income' in your financial assessment³¹. The Care Finance Officer will confirm this to you in writing and confirm your care charge based on your financial assessment including the notional income.

Deprivation of Assets

Deprivation of assets is where someone deliberately reduces their overall assets in order to reduce the amount that they are charged towards their care and support.

If the Council decides that you have deliberately given away or disposed of some or all of your savings or other capital asset or income in order to reduce the amount of your assessed care and support charge the Care Finance Officer will complete your financial assessment as if you still had those savings, asset or income. The asset or income would show on your assessment as notional income or notional capital.

If savings, asset(s) or income have been transferred to a third party in order to reduce your care and support charges the Council has the legal power³² to recover care and support charges from that third party where those charges relate to the value of the transferred asset or capital or to treat you as though you still had that asset or capital and show the asset or capital as notional income or notional capital on your financial assessment.

A person can deprive themselves of capital in many ways, but common approaches may be:

- a lump-sum payment to someone else, for example as a gift
- substantial expenditure has been incurred suddenly and is out of character with previous spending
- the title deeds of a property have been transferred to someone else
- assets have been put in to a trust that cannot be revoked
- assets have been converted into another form that would be subject to a disregard under the financial assessment, for example personal possessions
- assets have been reduced by living extravagantly, for example gambling
- assets have been used to purchase an investment bond with life insurance

³¹ Annex B Clause 29(a) of the Care and Support Statutory Guidance

³² Section 70 of the Care Act 2014

However, this will not be deliberate in all cases. Questions of deprivation therefore should only be considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of the financial assessment or has turned the asset into one that is now disregarded.

It is up to the person to prove to the local authority that they have not deprived themselves of the asset. If they are not able to, the local authority will assess you as if you still had the asset.

What must the local authority consider

There may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:

- (a) 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 did you have a reasonable expectation of the need for care and support?
- (b) did you have a reasonable expectation of needing to contribute to the cost of their eligible care needs?

For example, it would be unreasonable to decide that you had disposed of an asset in order to reduce the level of charges for your care and support needs if at the time the disposal took place you were fit and healthy and could not have foreseen the need for care and support.

Your intention to avoid your care charges must be a **significant factor, or the only reason**, you have dispossessed of an asset, in order to be found to have deprived yourself.

When deciding whether a deprivation has occurred the local authority should take into account:

Whether avoiding care and support charges were a significant motivation timing of the disposal.

When the asset was disposed of, could you have a reasonable expectation of the need for care and support?

Did you have a reasonable expectation of needing to contribute to the cost of your eligible care needs?

We may conduct our own investigations into whether deprivation of assets has occurred, rather than relying solely on information that you provide.

What is capital/ Asset

Capital can mean many different things and this is not a definitive definition. The local authority will consider the individual asset on its merits. In general it refers to

financial resources available for use and can be from sources that are considered more durable than money in the sense that they can generate a return.

The following list gives examples of capital. This list is intended as a guide and is not exhaustive:

- buildings
- land
- If you own multiple properties any property that is not your main home will be taken into account if you have non-residential or residential care.
- Your main home will be taken into account after the first 12 weeks of residential care.
- If your main home is jointly owned your equitable share of the property will be taken into account if you need residential care.
- National Savings Certificates and Ulster Savings Certificates
- Premium Bonds
- Stocks and shares - the market value of the shares will be taken into account less 10% even if the shares were purchased before you had knowledge of a need for care.
- capital held by the Court of Protection or a Deputy appointed by that Court
- any savings held in:
 - a. building society accounts
 - b. bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank, Girobank and Trustee Savings Bank.
 - c. save as you earn (SAYE) schemes
 - d. unit trusts
 - e. co-operatives share accounts.
 - f. Cash
- trust funds

Common approaches to deprivation

Deliberate reduction of your assets when you have knowledge of a need for care will be considered a deprivation. This list is intended as a guide and is not exhaustive:

This may include;

- Transferring a property to a family member / friend /third party at undervalue or for no value.
- Selling a property at undervalue.
- Putting a property into multiple names.
- Creating a trust to avoid a property being taken into account.
- Investing the proceeds of sale or spending the proceeds of sale of a property.
- Placing the proceeds of sale in an account not belonging to you.

Payments / gifts

This list is intended as a guide and is not exhaustive:

This may include;

- Lump sum payments to a family member / friend / third party.
- Large gifts – a large total sum gifted accumulatively over a year may be considered a deprivation.
- Reasonable gifts such as birthday or Christmas presents would not be considered a deprivation.
- Allowing a family member / friend / third party to access your bank account and withdraw funds with or without your consent.
- Where you chose to withdraw funds from your pension on retirement so that you can manage it directly, this may be treated as assessable capital. If the funds released from the pension are invested in assets that are disregarded, the fund could still be assessable capital if the reinvestment is treated as deliberate deprivation of capital to avoid care charges.
- Expenditure deriving from capital from a pension lump sum may be regarded as a deliberate deprivation of assets in some circumstances.

Assets

This list is intended as a guide and is not exhaustive:

This may include;

- Buying expensive assets, for example art work or cars.
- Living beyond your means or spending out of character.
- Buying Investment bonds with life insurance.
- Putting funds aside for funeral costs without buying a funeral plan.

There is further information about Deprivation of Assets in the Care and Support Statutory Guidance Annex E.

Delays to the Financial Assessment Process

If you (or your financial representative) unreasonably delay completing the financial assessment the Council will apply a Light Touch Financial Assessment and you will be assessed to pay the full costs of your care and support from the start date of the service provision.

If you then provide information for a full financial assessment within four weeks, which results in a lower charge, any reduction in charge will be reimbursed or credited against future Care and Support charges. If you provide the information after four weeks consideration will be given to refunding the difference – depending on the circumstances of the case and the reasons for the delay. The Director of Adult Care holds discretion in this matter.³³

‘Unreasonable delay’ will be determined on an individual basis; as a general rule, however, the Council expects you (or your representative) to be available to

³³ See the Councils Guide Working Out Your Care charges Annex A

complete a financial assessment within four weeks of contact from the Care Finance Officer.

If the Care Finance Officer asks you for further information to support or complete your assessment, the Council would expect you to provide this within two weeks of the date it was requested.

Financial Assessment Reviews

You can ask the Care Finance Officer to review your financial assessment at any time.

The Council will periodically review your financial assessment – usually annually – either when your care and support assessment is completed or when pensions, benefits and allowances change in April.

Your financial assessment review may be completed automatically when pensions, benefits and allowances change or a Care Finance Officer may contact you to carry out a full review of your financial circumstances. If your financial review changes what you are charged the Care Finance Officer will confirm this to you in writing.

If you disagree with your financial assessment you should contact the Care Finance Officer in the first instance to try and resolve any issues as soon as possible. We will go through the information to check that the assessment is correct and that the calculation or decisions have considered all your relevant information in line with the policy.

If you still do not agree with the Council's decision you can make a formal complaint to the Complaints and Data Protection Team Manager
complaints_cypandadults@bathnes.gov.uk

The Council's complaints procedure can be viewed at
<http://www.bathnes.gov.uk/services/your-Council-and-democracy/complaints-and-customer-feedback/complaints-about-adult-social>

If you are not satisfied with the decision made by the Council's complaints team you can refer the matter to the Local Government and Social Care Ombudsman
<https://www.lgo.org.uk/>

The Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH

Telephone: 0300 061 0614

Change in Circumstance

If your financial circumstances change at any time you must let us know immediately about these changes as they may affect your assessment and the amount you need to pay. If you do not let us know and we find out at a later date, you may have to pay a backdated charge if your assessment has changed.

If you fail to notify us and the Council becomes aware of a change to your financial circumstances, the Council will, at their discretion, take the change into account in

your financial assessment. This may result in a change to your assessed charge, if there is an underpayment of your assessed charge the Council will seek payment of this sum from you. If this means there is a change to your assessed charge and the Council has overcharged you, the Council will refund you the sum of the overpayment.

Use of Financial Information

The information collected and stored about your financial assessment is collected and store in compliance with the General Data Protection Rules³⁴. The Council will only share this information in accordance with the General Data protection Regulations. The Council and/or VirginCare will provide you with a privacy notice either via the Councils website or in paper format at your request. The Regulations also give you the right to see the information that the Council keeps about you.

Appeals

The Council wants to ensure that any charge you are asked to pay is fair and reasonable. Sometimes people using care and support services may experience exceptional circumstances which the Council will consider on an individual basis.

If you disagree with the outcome of your financial assessment or deferred payments / Interim Funding Decision you should contact the Care Finance Officer in the first instance to try and resolve any issues as soon as possible. The Care Finance Officer will go through the information with you and check the assessment / decision has considered all of the relevant information in line with the Charging and Financial Assessment rules.

If you are still dissatisfied with the outcome the Care Finance Officer will advise you how you can lodge an appeal with the Team leader for Care Finance.

If you still do not agree with the Councils decision you can make a formal complaint to the Complaints and Data Protection Team Manager
complaints_cypandadults@bathnes.gov.uk

The Councils complaints procedure can be viewed at
<http://www.bathnes.gov.uk/services/your-Council-and-democracy/complaints-and-customer-feedback/complaints-about-adult-social>

If you are not satisfied with the decision made by the Councils complaints team you can refer the matter to the Local Government and Social Care Ombudsman
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The Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH

Telephone: 0300 061 0614

³⁴ GDPR Clause 6.1(c) and 6.1(e) and 9.2(b) and 9.2(g)

Debt Recovery

If you are unable to pay your charge for care and support when they are due, either in full or in part, you must tell us as soon as possible so that we can discuss this with you and attempt to find a resolution.

You will be sent two reminders the first will be sent 28 days after the initial invoice and the second will be sent 42 days after the initial invoice.

If your care and support charges remain unpaid and there is no good reason why you (or your financial representative) are unable to pay your charge, the Council will start debt recovery action³⁵

The Council may consider allowing payment of the debt by instalments, we will require the full debt to be repaid within a short period depending on your financial circumstances and you will be asked to sign an undertaking confirming the terms of any agreement reached.

If your care and support charges remain unpaid despite the Council's reasonable attempts to recover the debt, we will consider making an application to the County Court to issue a claim to seek a judgment against you, if we do this you could also be liable to pay the Council's legal costs and interest on the debt at a rate agreed by the Judge.

Financial Assessment and Charging for Care Home Accommodation

If you have care and support needs identified that can only be met in a care home, you will need to pay a charge towards your accommodation fees in the care home.

- If your capital assets (such as savings and investments) are above the Upper Capital Limit, you will need to pay the full costs of your care home fees, usually, directly to the care home.
- If your capital assets are below the Upper Capital Limit, the Council will carry out a financial assessment with you to work out how much your charge towards the costs of the weekly care home fees will be.³⁶
- If you own a property, or part of a property, or have a beneficial interest in a property, there are rules around whether this is counted within your Capital assets or disregarded. See if you own a property below.
- If you qualify for Funded Nursing Care part of your weekly care charge will be paid through the NHS.³⁷

There are exceptions to being charged for care and support:

- If your care home placement is an 'After-care' support service provided under section 117 of the Mental Health Act 1983, you will not need to have a financial assessment as you will be exempt from charge.

³⁵ Care and Support Statutory Guidance – Annex D: Recovery of Debts

³⁶ See Annex B

³⁷ See Annex B

- If your care home placement is fully paid by the NHS through Continuing Healthcare you will not need to have a financial assessment as the care and support is provided free by the NHS.³⁸
- If you are placed in a Step Down bed
- If you are receiving services from the integrated reablement service for a short period of intensive therapies and support from health and social care professionals to promote regaining independence³⁹. (Please note that once the reablement service confirms that your short term reablement goals have been met, you may become charged for any additional services if the reablement service continues to meet your ongoing care needs while a long term care provider is found)

If you are responsible for the full charge of your care home because your savings and investments are above the Upper Capital Limit the Social Worker can arrange advice and support to help you choose a suitable care home that will meet your needs, You should consider:

- Find out from the care home what happens if your savings / investments fall below the Upper Capital Limit. For example would the home accept local authority payment rates or would they require you to nominate someone to pay a third party top-up. If you do not have anyone who could pay a third party top up you should ensure you chose a home that will accept local authority payment rates.
- You are responsible for paying the care charges directly to the care home
- If your savings / investments reduce and approach the Lower Capital Limit, you should contact the Council and request help with the care home costs. The Council will also review your care and support needs at the same time to make sure that the care home still meets your identified needs.

If you ask the Council to arrange your Care Home placement you will be charged an arrangement fee of £250.00 plus VAT.⁴⁰

If your capital assets are below the Upper Capital Limit, and you do not own any property, the Council will carry out a financial assessment of your income and capital assets to work out your 'calculated weekly care charge'. The Council use national rules to do this called the 'Care and Support (Assessment of resources) Regulations 2014' which are issued under section 17 of the Care Act 2014.

If you have chosen to move to a care home that is more expensive than the care homes that the Council have identified to meet your needs, you will need to identify a person who is willing and able to make top up payments – to pay the shortfall, this is called a third party top-up. See third party top-ups.

Your financial assessment will always make sure you are left with an amount for you to use for your day-to-day personal expenses in the care home. There is a standard amount for this Personal Expense Allowance set out in the Care and Support (Charging and Assessment Resources) Regulations 2014 which is reviewed each year by the Government. The current rate is shown in Annex A.

³⁸ You will need to request an assessment and meet the criteria

³⁹ Clause 4 of the Care and Support (Preventing Needs for Care and Support) Regulations 2014

⁴⁰ Clause 8.58 and 8.59 of the Care and Support Statutory Guidance

If you own a property

If you own a property, or have a beneficial interest in a property, the Care Finance Officer will check whether the property capital is disregarded.

The Care and Support (Charging and Assessment of Resources) Regulations 2014 and the Care and Support Statutory Guidance set out the circumstances in which property capital is always disregarded.

For example:

- If your spouse or partner still lives in the property your property capital would be disregarded in the financial assessment for as long as they continue to live at the property
- If you have a relative aged over 60, or a disabled relative who resides at the property the property would be disregarded for as long as they remain residing at the property.

The regulations state who counts as a 'relative' and the Statutory Guidance gives more information⁴¹.

Your property capital is disregarded for the first 12 weeks of moving permanently to a care home.⁴²

The purpose of the 12 week property disregard is to provide time to allow a long term decision about the property to be made.

The 12 week property disregard applies if:

- You move into a care home for the first time, and, as a result of the ownership of your home, you are responsible for the full charge of the care home fee.
- You are already living in a care home, and your property was previously disregarded in your financial assessment under a statutory disregard or a discretionary disregard, but, due to a change of circumstance those disregards are no longer relevant and the value of the property means you would be responsible for the full charge of the care home fees. A change of circumstance could, for example, be where a partner or relative living in the property goes into a care home themselves, or moves house or passes away.

The 12 week property disregard only applies to your sole or main residence prior to moving into a care home. It does not apply to any other property or land you own.

If you have savings and capital above the Upper Capital Limit at the start of your placement in a care home, and you own a property, you have the opportunity to make decisions about what to do with your property during the period you are able to self-fund – unless this is less than 12 weeks. In this event you will be entitled to the remaining period of the 12 week property disregard from the start of your placement. For example if you can self-fund for a period of 6 weeks from the start of the care

⁴¹ Annex B Clause 35 of the Care and Support Statutory Guidance

⁴² The Care and Support (Charging and Assessment of Resources) Regulations 2014 Schedule 2 Paragraph 2.

home placement you would be entitled to a further 6 weeks property disregard period.

Your financial charge during the property disregard period will be based on a financial assessment of your income. The Care Finance Officer will carry out the financial assessment based on your financial circumstances excluding the value of your main property. The financial assessment will take account of your income and any savings or assets above the Lower capital Limit and leave you with your personal expense allowance.

In addition to your personal expense allowance during the 12 week property disregard period you will be allowed the costs of⁴³:

- Rent / mortgage
- Buildings insurance (subject to evidence being provided of the amount being paid for building insurance only)
- Council tax
- Utility standing charge
- Basic property maintenance

Your income based charge will be paid directly to the care home and the Council will pay the difference between your payment and the total weekly care home charge, with the following exceptions:

- If the care home is Council owned your weekly care charge will be paid directly to the Council
- If the Council has agreed with the care home under their contract to make full payment your weekly care charge will be paid directly to the Council

If the Council pays your weekly care charge the assessed weekly charge is due for payment at the time we raise an invoice. See how to pay your Charges for Care and Support.

If you receive Attendance Allowance, Disability Living Allowance (Care Component) or Personal Independence Payment (Daily Living Component) these benefits will continue to be paid to you by the Department of Work and Pensions for the first four weeks that you are in the care home or hospital. After the first four weeks these benefits are not payable to you whilst the Council provides funding towards your care home costs.

At the end of the 12 week property disregard period, if you have not entered into a deferred payment agreement, you will become responsible for the full cost of your care home placement.

If you ask the Council to arrange your Care Home placement you will be charged an arrangement fee of £250.00 plus VAT.⁴⁴

⁴³ Annex C Clause 46(d) the Care and Support Statutory Guidance

⁴⁴ Clause 8.58 and 8.59 of the Care and Support Statutory Guidance

Discretionary Disregard of Property

The Care Act 2014 sets out a number of situations where the property you live in and have a beneficial interest in, must be disregarded⁴⁵.

However there may be circumstances where the Council considers it appropriate to disregard your interest in the property, even though we are not required to by the national Regulations, this is a discretionary disregard⁴⁶.

The Council must balance the use of this discretion with the need to ensure that public funds are not used inappropriately.

If you ask us to consider disregarding your property on a discretionary basis, in making this decision we will consider our financial resources, and the following factors:

- The reason for the occupation of the property by any third party
- The timing of the move to the property by any third party
- How long has the third party resided at the property
- What is your relationship with the third party
- Has the third party cared for you and if so for how long and what was the main reason for the move to your property
- Where did the third party reside before moving to the property
- When did you first have identified care needs
- When was care home accommodation first considered as an option for you
- Has the third party made any financial contribution to the property and if so how much and why.
- How is the property owned

The weight placed against each factor in considering the request will depend on the individual circumstances and actions taken. The decision will be made by a Senior Manager or the Councils Panel.

You can ask your Care Finance Officer if you would like the Council to consider a discretionary property disregard.

The Council will require you to provide all the information relevant to your request, once this information has been gathered the request will be considered by the Team Manager for a decision.

In difficult cases advice may be sought from the Council's legal advisers.

If your request is turned down you will be informed of the reasons in writing and the Council will inform you how you can make a complaint if you disagree with the decision.

⁴⁵ See Clause 34-41 Annex B of The Care and Support Statutory Guidance

⁴⁶ See Clause 42-44 Annex B of The Care and Support Statutory Guidance

Financial Assessment and Charging for Non-Residential Care and Support.

If you have care and support needs whilst living in supported accommodation or at home you may need to pay something towards your care and support.

If your savings and capital assets are above the Upper Capital Limit, you will need to pay the full cost of your care and support. We can help you arrange your care and support or we can make the arrangements for you.

If you ask us to arrange the care and support on your behalf you will need to pay the full cost of your care and support.

If your total savings and capital assets are less than the Upper Capital Limit, we will carry out a Financial Assessment to work out your 'calculated weekly care charge'.

To calculate your weekly care charge we carry out the following assessment:

Weekly income + Tariff income on savings

- Housing expenses
 - Minimum income guarantee
 - Disability related expenditure
 - Allowable expense commitments
- = calculated weekly care charge

Weekly income is the amount of income you receive⁴⁷ that is included in your financial assessment (any earned income is disregarded⁴⁸). Your income is converted into a weekly figure in the financial assessment.

Tariff income on savings is a weekly amount calculated from capital assets that are not disregarded. If you have capital assets above the Lower Capital Limit but less than the Upper Capital Limit we will include £1 for every £250⁴⁹.

Housing expenses – see 'Housing Expenses' for what costs are allowed in your Financial Assessment.

Minimum Income Guarantee is an allowance given in the assessment by the Government to cover living costs – see Minimum Income Guarantee for further information.

Allowable expenses commitments – see allowable expense commitments.

Disability Related Expenditure (DRE) the Council may make an allowance in your financial assessment for expenses in relation to disability or medical conditions – see Disability Related Expenditure.

If you live with a partner:

⁴⁷ This may include notional income if you are entitled to income that you have chosen not to receive. For example, if you have a pension fund that you have chosen to draw a lower amount than you are entitled to, your weekly income will include the full amount of income you were entitled to draw from an annuity product.

⁴⁸ Clause 8.21 of the Care and Support Statutory Guidance

⁴⁹ Clause 8.20 of the Care and Support Statutory Guidance

You will need to identify:

- Your own income
- Your own capital
- Your own expenses
- AND any income, capital and expenses that both you and your partner are entitled to or incur jointly (this could be income received, and/or capital held, and/or expenses incurred by either you or your partner on behalf of both of you). The Council as a starting point will assume that joint income and capital are owned in equal shares; however it is for you to produce evidence of any assertion that income and/or capital are held in unequal shares.

Examples of income that are treated as received jointly for couples include but are not limited to:

- Pension Guarantee Credit
- Pension Saving Credit
- Income related Employment Support Allowance
- Universal Credit

The Council will assume that the payment of benefits and credits such as these are shared equally between both members of the couple, regardless of who the payment is made to.

The Minimum Income Guarantee (MIG) allowance that will be used in the financial assessment where the individual is part of a couple will be that shown in the Care and Support (Charging and Assessment of Resources) Regulations 2014⁵⁰ relating to an adult who is part of couple.

Calculation of Income

In the Financial assessment process your sources of income will be included, disregarded or partially disregarded. The Government provides guidance on which sources of income the Council must disregard and gives the Council discretion in respect of other sources of income.

The table below shows how sources of income are treated by the Council.

⁵⁰ Clause 7.4 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 as amended by https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/677736/Local_authority_circular_-_charging_for_care_and_support_LAC_DHSC_2018_1.pdf

Key –

I Included

D Disregarded

PD partially disregarded

| SOURCE OF INCOME | HOW THE CARE FINANCE OFFICER TREATS |
|--|-------------------------------------|
| Armed Forces Independence Payment | D |
| Attendance Allowance | I |
| Boarders | PD ⁵¹ |
| Carers Allowance | I |
| Child Benefit | D |
| Child Tax Credit | D |
| Child Maintenance | D |
| Charitable Income | D/PD ⁵² |
| Constant Attendance Allowance | I |
| Court Order Payments or Settlements | I |
| Disability Living Allowance (Daily Living) | I |
| Disability Living Allowance (Mobility) | D |
| Earnings | D |
| Employment and Support Allowance * | I |
| Equity Release Scheme Income | I |
| Exceptionally Severe Disablement Allowance | I |
| Guaranteed Income Payments (paid under Armed Forces Compensation Scheme) | D |
| Housing Benefit | D |
| Incapacity benefit | I |
| Income Support * | I |
| Industrial Diseases Benefit | I |
| Interest from Capital (such as savings and investments) | D or I ⁵³ |
| Income from Trade Unions and Friendly Societies | I |
| Job Seekers Allowance * | I |
| Lodgers and self-supporting children living at home | I |
| Maintenance Payments specifically relating to children | D |
| Nationalist Social Persecution Payments | D |
| Notional income - this may include notional income from pension funds where a lower amount is being drawn, or where a pension income has been deferred | I ⁵⁴ |
| Occupations Pension – Personal Pensions | I |
| Pension Guaranteed Credit | I |

⁵¹ Annex F clause 20 of the Care and Support Statutory Guidance

⁵² This may be fully disregarded or partially disregarded in line with Part 4 Clause 16, 22 and Schedule 1 of the Care and Support (Charging and Assessment of Resources) Regulations 2014.

⁵³ If the capital has been included in the financial assessment, the income received from the capital is usually disregarded. If the capital is not included in the financial assessment, the income received from the capital is usually included. The Care and Support Guidance (Annex A and B) has further examples.

⁵⁴ Notional income is an amount of money that is counted in the financial assessment where the individual could access (or could have accessed) that money as income if they chose to, but have chosen not to.

| | |
|--|---------------------------------------|
| Personal Injury Payments | D subject to investment ⁵⁵ |
| Personal Independence Payment (Daily Living) | I |
| Personal Independence Payment (Mobility) | D |
| Severe Disablement Allowance | D |
| State Pension | I |
| Social Fund Payments | I |
| Sub Tenants | D |
| Trust Fund Income | I/D ⁵⁶ |
| Universal Credit * | I |
| War Pension paid to Veterans | I |
| Widows Benefit | D |
| Winter Fuel and Cold Weather Payments | D |
| Working Tax credit | D |

* Personal Injury payments will be disregarded for 52 weeks⁵⁷ from the date of receipt and then taken into account in any financial assessment unless the sum received is placed in a trust fund or Deputyship account.

* Income from means-tested benefits paid to one member of a couple are considered as shared equally between both members of the couple:- 50% of a couple's income-related Employment and Support Allowance; Pension Credit; and Universal Credit is considered within the financial assessment for the member of the couple who receives the care and support.

All other income not listed in the table will be considered in the Financial Assessment in line with the Care and Support (Assessment of Resources) Regulations 2014, along with any tariff income from savings and capital.

Tariff income is a weekly amount calculated from capital assets that are not disregarded. The weekly amount is added to your income in your financial assessment. This is calculated as follows:

| LEVEL OF CAPITAL OR SAVINGS | HOW THIS IS CONSIDERED IN THE FINANCIAL ASSESSMENT |
|-----------------------------|--|
| £0 - £14,250 | Disregarded |
| £14,251 - £23,249 | Tariff income is calculated at the rate of £1 for every £250 or part thereof ⁵⁸ |
| £23,250 + | Full cost of care and support applies at or above this level |

⁵⁵ Clause 15(3)(c) and 22 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 and Schedule 10 Para 12 and 12(a) of the Income Support (General) Regulations 1987.

⁵⁶ Treatment of Trust Funds income depends on the situation and are detailed in the Care and Support (Assessment of Resources) Regulations 2014 Part 1 Clauses 22 and 27

⁵⁷ Paragraph 12 of Schedule 10 of the Income Support Regulations (personal Injury Trusts)

⁵⁸ Clause 8.20 of the Care and Support Statutory Guidance

Housing Expenses

The Council will make allowance in the non-residential financial assessment for your housing costs. Sharing costs – if you share a household with other adults, the amount of the housing costs item that is allowed in your financial assessment will be on the basis that costs are shared equally by the number of adults in the household, unless the Council has information to show that a different way of sharing the costs should be considered.

Allowances are made depending on your housing tenure and circumstances, including:

- Rent (net of housing benefit). If you are entitled to receive full housing benefit or Universal Credit Housing Allowance but you have your benefit reduced by a 'non-dependent deduction', your financial assessment will not show an allowance for the non-dependent deduction amount.
- Mortgage (net of assistance through benefits such as Pension Credit, Employment and Support Allowance and Universal Credit)
- Council Tax (net of Council Tax Support). If you are entitled to receive full Council Tax Support but have your support reduced by a 'non-dependent deduction', your financial assessment will not show an allowance for the non-dependent deduction amount.
- Essential service charge and ground rent net of funding through benefits
- Water – the Council will allow the costs of the standing charge
- Gas and electricity - the Council will allow the costs of the standing charge
- Home Buildings insurance⁵⁹ (subject to evidence being provided of the amount being paid for building insurance only)

Allowable Expense Commitments

An allowance for the following expense commitments may also be made in your financial assessment, if they apply to you:

- Payments under a Court Order (e.g. child maintenance)
- Educational expenses at the discretion of the Council and if they are identified in your care and support plan (these are costs associated with a registered education or training course at University or College). Costs are apportioned across the year, and a weekly allowance is calculated. Allowable expenses include tuition and study materials (e.g text books) subject to the course being appropriate to assist with obtaining work and may include tools required for an apprenticeship, if you have to pay for them. You should retain receipts of expenses as proof.

Minimum Income Guarantee (MIG) for Basic Living Costs

This is the level of income that national rules state you must be left with before any charge can be made for non-residential care and support services. This Minimum Income Guarantee is to ensure that you are left with money to cover your day-to-day

⁵⁹ See Annex C Clause 49 of the care and Support Statutory guidance

basic living expenses. The level of the Minimum Income Guarantee varies depending on your age and other circumstances at the time of your financial assessment.⁶⁰

If you live with a partner who is on a low income⁶¹ you and your partner can request that the Council carries out an affordability check of your joint situation to ensure that your level of Minimum Income Guarantee (or basic living costs) maintains your joint financial resources above Department for Work and Pensions minimum levels.

Disability-Related Expenditure (DRE)

This is an allowance that is made in your financial assessment for additional expenses due to disability or medical condition if you receive Attendance Allowance or Personal Independence Payment, Disability Living Allowance (Care component) or Health Allowance component of Universal Credit. Your Social Worker will as part of the care and support assessment refer any request related to a disability and/or medical condition to their Social Work Team Manager who will decide if this cost will be allowed as part of your financial assessment.

DRE will be considered when:

- The extra cost is needed to meet your specific need due to a medical condition and/or disability, as identified in your care and support plan⁶².
- The cost is reasonable and verified
- It is not reasonable for a lower cost, free alternative item or service to be used. If a lower cost alternative could have been used, the expense considered will be capped at the cost of the lower item.

DRE Allowance is not allowed for

- General items or services required for daily living, which would be used by the general population;
- Any item or service met by payment from a grant (e.g. Disability Facilities Grant) or where another funding source has been provided;
- The difference between the actual cost and the lower cost alternative where the Council considers it reasonable for a lower cost alternative;

Where a particular item of expenditure combines more than one item or service the Council will only consider the part of the expense that is meeting the specific disability or medical condition. For example, if you pay a hairdresser the hair washing cost would be considered if you could not do this task yourself, however, hair cutting costs would not be allowed, as this is a service used by the general population and is not a disability related expense.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/677736/Local_authority_circular_-_charging_for_care_and_support_LAC_DHSC_2018_1.pdf

⁶¹ 'Low Income' relates to income (including tariff income from savings) below Department for Work and pensions minimum allowance/personal allowance levels of benefit.

⁶² Annex C Clause 39-41 of the care and Support Statutory Guidance.

Sharing costs – if you share a household with other adults, and the additional disability-related expense item relates to a service that supports the household as a whole (for example payments to a cleaner) the amount of the expense item that is allowed in your financial assessment will be on the basis that costs are shared equally by the number of adults in the household, unless the Council has information to show a different way of sharing the costs should be considered.

Assessed Weekly Charge

Your assessed weekly care charge is the amount you are required to pay towards the costs of your non-residential care and support. You will not be asked to pay more than your assessed weekly care charge.

- a. if your assessed weekly care charge is nil, you will receive your non-residential care and support service free of charge.
- b. If your assessed weekly care charge is more than the cost of your agreed care and support, you will pay the full cost of your care and support.
- c. if your assessed weekly charge is less than the cost of your care and support, you will pay only your assessed weekly charge towards your care and support.

Annual Review

We will review your charge annually. This usually happens around the time that pensions, benefits and allowances change in April.

If you disagree with your financial assessment you should contact the Care Finance Officer in the first instance to try and resolve any issues as soon as possible. We will go through the information to check that the assessment is correct and that the calculation or decisions have considered all of your relevant information in line with the policy.

If you still do not agree with the Councils decision you can make a formal complaint to the Complaints and Data Protection Team Manager
complaints_cypandadults@bathnes.gov.uk

The Councils complaints procedure can be viewed at
<http://www.bathnes.gov.uk/services/your-Council-and-democracy/complaints-and-customer-feedback/complaints-about-adult-social>

If you are not satisfied with the decision made by the Councils complaints team you can refer the matter to the Local Government and Social Care Ombudsman
<https://www.lgo.org.uk/>

The Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH

Telephone: 0300 061 0614

How to pay your charges for Care and Support

You will be required to pay your assessed weekly charge directly to the Care provider if you are assessed as self-funding. This will be either the Care Home or the agency providing the care and support in other settings.

If the Council pays your assessed weekly charge you will be sent an invoice 4 to 8 weeks in arrears and payment is due immediately. If you make payment by direct debit payment will be made by the 5th of the month following the date of the invoice.

7. Section 117 And Social Care Packages Of Care

If the service you receive is an after-care service under Section 117 of the Mental Health Act 1983 you will not require a financial assessment and you will be exempt from charge for the care and support provided under your Section 117 after care plan.

Your care and support plan may show that only a percentage of your care and support is funded under Section 117 and the remainder is funded by social care.

For the percentage of the care and support plan that is social care funded you will have a financial assessment carried out to assess what you can afford to pay towards the social care element of the identified care and support needs.

The financial assessment will be on the same basis as that for non-residential or residential care and support dependant on where you receive your care and support.

You will be required to pay your assessed weekly care charge:

- a. if your assessed weekly care charge is nil, you will receive your non-residential care and support service free of charge.
- b. If your assessed weekly care charge is more than the cost of your agreed care and support, you will pay the full cost of your care and support.
- c. if your assessed weekly charge is less than the cost of your care and support, you pay only your assessed weekly charge towards your care and support.

8. Mental Capacity To Manage Finances

If you have mental capacity but would like another person to manage your finances for you, you can nominate that person on the finance assessment form and the Council will deal with this person on your behalf, the Council will continue to keep you informed and consult with you where appropriate.

If you have capacity but would like another person to be able to sign legally binding documents on your behalf, you will need to appoint a Lasting Power of Attorney. The Council will deal with the appointed attorney on your behalf, the Council will continue to keep you informed of all decisions and consult with you where appropriate.

If you are legally appointed to act for someone the Council is arranging care and support for, who lacks mental capacity⁶³ to manage their finances you must provide us with:

- Evidence of your legal authority to act as the financial agent for that person such as-
 - A registered Lasting Power of Attorney: or
 - A registered Enduring Power of Attorney: or
 - A deputyship Order from the Court of Protection⁶⁴

You will need to provide any financial information required to carry out the financial assessment for the person needing care and support.

The Care Finance Officer will then:

- Send you any correspondence addressed to the person you represent.
- Require you to sign any financial documents or contracts on behalf of the person you represent.
- Require you to settle any invoices for care charges raised in the name of the person you represent.

If you act for a person who lacks mental capacity you should ask the Department for Work and Pensions (DWP)⁶⁵ to appoint you to deal with the state benefits for that person (an 'appointee for benefits').

An 'appointee for benefits' has authority to deal with state benefits only for that person and may not have access to other financial information or assets records belonging to that person. Where state benefits are the only source of income, and there are no other financial assets (such as savings, investments, property) it will usually be possible for the financial assessment to be completed.

If the person who lacks capacity has other assets (such as a private home, savings, investments, and private income) a suitable representative will need to make an application to the Court of Protection to become Deputy so they can deal with the person's finances and affairs.

The Deputy can be a family member, friend or solicitor. If no suitable representative can be identified, the Council will make the application to the Court of Protection to become Deputy or to have a panel Deputy appointed (usually a solicitor).

If you have applied to the Court of Protection, or you intend to apply, to become Deputy you should inform the Council and Department of Work and Pensions.

While your application is in process:

The Court of Protection can take a long time to process the application for Deputyship; the usual timeframe from when the application is sent to the Court of

⁶³ Clause 2 Mental Capacity Act 2005

⁶⁴ Clause 19 Mental Capacity Act 2005

⁶⁵ For further information see www.gov.uk/government/publications/making-decisions-who-decides-when-you-cant

Protection is around 5 months. During this time if you are able to provide sufficient information about the persons finances the Council will carry out the financial assessment and the Council will give you information about any potential charges for the care and support.

If the Council can complete a financial assessment we will send you invoices for the care and support charges but allow for payment to be delayed until you receive legal authority to access the necessary accounts.

If the Council cannot complete a financial assessment we will defer the assessment until you have the legal authority to access the financial information and backdate any assessed charges to the date the person started receiving the care and support. The Council may work out an interim charge based on state benefits and send an invoice for that amount, once you have authority to access the person's financial information the Council will complete the financial assessment and backdate the assessment to the date the person started receiving care and support making any required adjustment for payments made.

If the person you represent clearly has capital above the upper capital threshold that would not be disregarded the Council will consider the person to be a self-funder and will not provide financial assistance.

You can find information on becoming a financial representative see:

- Make decisions on behalf of someone www.gov.uk/make-decisions-for-someone
- The Mental capacity Act 2005 www.gov.uk/government/publications/making-decisions-who-decides-when-you-cant
- Setting up and registering Lasting Power of Attorney www.gov.uk/lasting-power-of-attorney-duties
- Registering existing Enduring Power of Attorney www.gov.uk/enduring-power-of-attorney-duties
- Applying to the Court of Protection to become a Deputy www.gov.uk/become-deputy
- Being appointed by the Department of Work and Pensions to manage state pension and benefits www.gov.uk/become-appointee-for-someone-claiming-benefits

You can also find information on the NHS website www.nhs.uk – on the Guide to Care and Support pages.

9. Residence When Moving To Accommodation Outside Bath And North East Somerset Council

If you move to accommodation outside of Bath and North East Somerset while we are responsible for funding your care (because of the availability of suitable accommodation) to meet your care and support needs, you still remain a Bath and North East Somerset resident.

The Council will keep the same responsibility for you that they have for someone living in the Bath and North East Somerset area. Only if you later choose to move by

private arrangement may you become 'ordinarily resident' in your new area. If this happens, your new Council becomes responsible for any future care and support assessment and/or funding⁶⁶.

If you fund your own care and support and choose to move to a different area for accommodation to meet your needs (for example, to be closer to your family) you will usually become 'ordinarily resident' in the new area. If you become eligible for support from adult social care services in the future, the Council in your new area would be expected to fulfil this responsibility⁶⁷.

10. Deferred Payment Agreements

Introduction

Deferred Payment Agreements are a way of making sure you are not forced to sell your home during your lifetime to pay for care, and to give you more flexibility about your care-funding options.

The 'Care and Support (Deferred Payment) Regulations 2014' set out the situations in which the Council must offer a Deferred Payment Agreement and where the Council may offer a Deferred Payment Agreement. These Regulations are set in accordance with the Care Act 2014 Sections 34 and 35.

A deferred Payment Agreement is generally only available to people who:

- Have identified needs assessed as being best met in a care home on a permanent basis; and
- Have been assessed to pay the full fees of care home accommodation because of property they own that takes their capital assets above the Upper Capital Limit.

The Council have taken a decision that Deferred Payment Agreements are only available to those in residential care.

This policy only applies to Deferred Payment Agreements entered into after the 6th April 2020 any agreement entered into on or before the 6th April 2020 will continue under the terms and conditions of your existing agreement.

A Deferred Payment Agreement will not be offered if you own your own home AND have capital or assets (including other property) above the Upper Capital Limit. In this case you are considered to be able to fund your own placement without the need to involve the Council for funding the Council can still provide you with an assessment, information and advice.

⁶⁶ Chapter 19 Care and Support Statutory Guidance and Chapter 39 Care Act 2014.

⁶⁷ Chapter 19 Care and Support Statutory Guidance and Chapter 39 Care Act 2014.

Background

A Deferred Payment Agreement (DPA) is an agreement between you and the Council, where the full payment for your care charges are 'deferred' (put off to a later date) and paid in the meantime by the Council – provided you can offer the Council a form of security (a legal charge against your property). The money you owe to the Council for your care charge is then repaid to the Council when your home is sold, or from your estate, or from a third party at the end of the Agreement.

If your financial assessment shows you can afford to pay a charge from your income and other capital assets towards your care charges you will be required to pay your assessed charge throughout the term of the DPA. This will lower the amount of the deferred charges to be repaid to the Council at the end of the DEPA. A financial assessment will be carried out in accordance with the statutory guidance.

If you accept the offer of a DPA with the Council you will charge administration fees towards the costs of setting up and monitoring the DPA. You will also be charged interest on the charges that you defer from the start of the DPA.

Eligibility Criteria

You are eligible to apply for a Deferred Payment Agreement if all points below apply to you:

- Your care assessment shows that your identified needs are best met in a care home; AND
- The total of your other capital assets (not counting your home) are below the Upper Capital Threshold; AND
- The property is registered at the Land Registry; AND
- The value of the property capital provides adequate security to the Council; AND
- The Council can secure the Deferred Payment Agreement through a first legal charge against your property: AND
- You own and have a legal and beneficial interest in your home; AND
- Any other person with a legal and /or beneficial interest in your home is willing and able to sign the required legal documents; AND
- The Council considers you have appropriate property insurance arrangements in place; AND
- You have capacity to enter into a Deferred Payment Agreement or you have a legally-appointed representative to enter into a Deferred Payment Agreement on your behalf.

Specific Property Issues

Jointly-owned property – If your DPA is to be secured by way of a legal charge and the property is jointly owned then all registered proprietors (owners) must sign the legal charge and provide a completed identity form for the Land Registry, they must also confirm in writing that they will not object to the sale of the property when the time comes to settle the debt. You will need to provide proof of the percentage you

own and its potential value (at your cost); the maximum legal charge amount would be your share in the total value less 10% and £14,250.00 (the Lower Capital Limit).

Shared Ownership and Tenants in Common – A DPA can only be approved if all co-owners and/or landlord agree to the legal charge. You will need to provide proof of the percentage you own and its potential value (at your cost); the maximum legal charge amount would be your share in the total value less 10% and £14,250.00 (the Lower Capital Limit).

Equity Release – where part of the value of the property has been released by equity release the Council will require the person with the benefit of the equity release charge to agree to the Council charge being the first legal charge (by way of a deed of postponement) and the Council will require proof of your residual equity in the property.

Leasehold properties – if your property is leasehold you can apply for a DPA, however sometimes restrictions are placed on the title (registered at the Land Registry) and the agreement of the head landlord/ freehold owner is need to arrange placing the legal charge on the property. If this is the case it is your responsibility to arrange for and obtain this consent and to meet any costs. In the event that consent is not forthcoming the Council cannot accept the property as security.

Sole proprietor restriction – the property title can sometimes include a restriction that means a single person cannot consent to a change to the title, if this is the case the Council will either ask you to appoint a trustee to act as a second party or ask you to sign two documents that will remove the restriction, an ST5 and an RX3. It will depend on why the restriction is on the title.

Unregistered property – you must register your property with the Land Registry for a DPA and legal Charge to be secured against the property. If your property is unregistered the Council will require you to arrange and pay for first registration, you can find further information on the Land Registry website: www.gov.uk/registering-land-or-property-with-land-registry

If one or more of the registered owners of the property cannot give consent due to lack of mental capacity please refer to part 8 of this document in respect of Deputyship.

Financial Information and Advice and Legal Advice relating to a Deferred Payment Agreement (DPA)

The Council will provide you information (in general terms) about:

- Types of financial security for a DPA;
- The maximum amount that can be deferred (the equity limit) and what happens once the equity limit is reached;
- How interest and administration costs are charge;
- What happens when the DPA terminates, options for repayment and what happens if you do not repay the amount due.

Equity limit – this is the term used to describe the maximum amount which you can borrow under a Deferred Payment Agreement (DPA).

This maximum amount is calculated by taking the value of the property and reducing it by 10% (or if the property is owned by more than one person the amount equal to their percentage ownership of the property i.e if the property is owned by 2 people 5%); and a fixed amount equivalent to the Lower Capital Limit.⁶⁸

| | |
|--------------------------|-------------------------------|
| Example – property value | £200,000 |
| Less 10% | - £20,000 |
| Less fixed amount | £14,250 (lower capital limit) |
| Equity limit | £165,750 |

Legal Charge

A legal charge is a legal document held by the Land Registry which is registered against your property when someone other than the registered owner(s) of the property wants to have it legally acknowledged that they have a financial interest in the property.

A legal charge in favour of the Council would need to be repaid on completion of the sale of the property, or on your death, so that the Council can arrange to remove their charge with the Land Registry.

The Council must obtain a first legal charge this means that the Council will be paid first when the property is sold. A legal charge can only be registered by the Land Registry if:

- All the property owners consent;
 - The property is registered at the Land Registry;
 - There are no leasehold restrictions, or, if there are, the head landlord/freeholder agrees to the legal charge;
 - Any charge already secured signs a deed of postponement
- The Council advises you to obtain independent legal advice before entering into the legal charge.

Solicitor's Undertaking

A Solicitor's 'Undertaking' is a legally binding agreement. The Council may accept a Solicitor's Undertaking as security against your Deferred Payment Agreement or if you are provided accommodation in rented supported accommodation, extra care housing schemes or Shared Lives schemes. An undertaking is where your conveyancing Solicitor undertake (commits) to pay the Council the full amount of your Deferred Payment Agreement debt, usually from the proceeds of sale of your property.⁶⁹

The Council will normally agree to fund your package of care and support on the basis of a Solicitor's Undertaking if you can confirm the following:

- The property is on the market and you have a prospective buyer; AND

⁶⁸ Clause 9.42 of the Care and Support Statutory Guidance.

⁶⁹ Clause 9.66 of the Care and Support Statutory Guidance.

- You have instructed conveyancing Solicitors; AND
- The instructed conveyancing Solicitors can confirm that completion of the sale will occur within 6 weeks.

If the Council cannot confirm the above you will be required to enter into a Deferred Payment Agreement (DPA) irrespective of the potential sale.

If the sale falls through you will be expected to enter into a Deferred Payment Agreement.

If you ask the Council to obtain a Solicitors Undertaking you will be charged an arrangement fee of £250.00 plus VAT.⁷⁰

Assessed Charge And Flexible Disposable Income Allowance

During the course of the Deferred Payment Agreement you will be assessed to make a financial charge based on your income and savings and assets other than your property. You are required to pay your assessed care charge on an on-going basis.

In calculating your assessed charge during your Deferred Payment Agreement you are allowed to retain a weekly 'disposable income allowance'⁷¹ up to the amount set by statute. This disposable income allowance is more than, and in place of, the 'personal expense allowance' so that you have enough money for your personal expenses and to maintain and insure the property.

You can choose to keep the maximum disposable income allowance or a lower amount – as you wish. In deciding whether to keep your full disposable income allowance, you should consider the potential effect on the level of your deferred debt as well as the flexibility you have.

If you wish to keep more than the personal expense allowance you will need to inform us in writing when you return the signed Deferred Payment Agreement documents, you will be entitled to keep the higher amount once the Deferred Payment Agreement has been registered with the Land Registry.

You should seek independent financial advice before making decisions about entering into a Deferred Payment Agreement.

Renting Out Your Property

If you wish to rent out your property while you have a Deferred Payment Agreement (DPA) you should seek independent financial and legal advice. This is a decision for you to make.

If you are applying for a DPA and are proposing a letting arrangement, you must let us know either by telling the Care Finance Officer when they carry out your financial assessment or by letter. Any tenancy agreement must be for 6 months or less.

⁷⁰ Clause 8.58 and 8.59 of the Care and Support Statutory Guidance

⁷¹ Clause 9.48-9.50 of the Care and Support Statutory Guidance

If your property is already let you must provide the Care Finance Officer with a copy of the tenancy agreement. Any tenancy agreement must be for 6 months or less.

The Council will include your net rental income as part of your assessed weekly charge for your care and support. Your net rental income will be the amount after the agent's fees, any liability to taxation and reasonable maintenance expenses.

You must make sure your property insurance is appropriate to a letting arrangement.

The Deferred Payment Agreement Application Process

If you wish to apply for a Deferred Payment Agreement, you will need to do this in good time to allow for your application to be considered and legal arrangements to be in place before you need funding (for example, to be in place before the end of the 12-week property disregard period).

If you have been in a care home on a self-funding basis (because of the level of your income or capital) and you now wish to apply for Council funding and a DPA, you should submit an application for a DPA as soon as possible and no later than six weeks after the need to apply for DPA has been identified either by us or you⁷².

The Council will commence funding:

- If you⁷³ approach Social Services before the date your capital (excluding your property) dropped to below the upper capital limit of £23,250, the Council will fund from the date your capital drops to below the upper capital limit.
- If you⁷⁴ approach Social Services after your capital has dropped to below the upper capital limit of £23,250 the Council will fund from the date you approached Social Services.

1: Information given to you about Deferred Payment Agreements (DPA)

If your identified needs show that a care home placement is appropriate to meet your needs, we will:

- Check with you whether you own your home and establish whether your property will be disregarded in your financial assessment;
- Carry out appropriate checks, including previous financial assessments and a Land Registry search;
- Tell you if we think you are eligible for a 12-week property disregard and Deferred Payment Agreement as soon as a placement in a care home is identified as appropriate;
- Give you information about the Deferred Payment scheme ;
- Carry out a financial assessment of your situation (your income, savings, details and value of your property capital, outgoings relating to your property);
- Invite you to apply for a DPA, giving a date by which you should return the completed application form. This date should be no later than six weeks from the date your placement started in the care home;

⁷² Or your appointed representative – see Mental Capacity to manage Finance for more information.

⁷³ Or your appointed representative – see Mental Capacity to manage Finance for more information.

⁷⁴ Or your appointed representative – see Mental Capacity to manage Finance for more information.

- Make clear to you that the DPA will only be agreed by the Council if all the owners of the property agree to the Legal Charge ;
- Tell you if you need to arrange a formal valuation of your property, if we do not agree with the valuation you obtain the Council may obtain its own valuation the Council will then discuss the valuations with you to mutually agree a valuation. The costs the Council incurs in carrying out the valuation will be reflected in the administration costs charged to you in the set up fees for the DPA.

2: Submit your Deferred Payment Application - Within six Weeks

- A DPA application form must be completed, signed by you⁷⁵ and returned to us within six weeks of admission to a care home on a permanent basis.
- The application for the deferred payment agreement must include the following information:
 - ❖ The room rate from the 13th week,.
 - ❖ Signed confirmation from the care home that the rate from week 13 is agreed.
 - ❖ The value of the property
 - ❖ Confirmation of who owns the property and on what basis (i.e. joint tenants, tenants in common, trust).
 - ❖ Whether you intend to seek a first party top up (see First Party Top Ups) and if so the amount.
 - ❖ A copy of the property building insurance.
 - ❖ Any Lasting Power of Attorney or Deputyship Order or a certified copy (if appropriate).
 - ❖ Any tenancy agreement (if appropriate).
 - ❖ If the property was jointly owned and one party has died the grant of probate or Will or a certified copy.
- If you are already in a care home and become eligible to apply for a DPA in other circumstances you⁷⁶ should submit an application for a DPA as soon as possible and no later than six weeks after the need to apply for DPA has been identified either by us or you. For example - this could be where your property had previously been subject to a statutory disregard but that disregard has now ended.
- You⁷⁷ will need to speak with the care home and negotiate the cost of care from week 13 onwards and obtain written confirmation from the care provider of the agreed rate, this must then be provided to the Council together with your application for a deferred payment agreement.
- If the deferred payment application is not fully completed and returned to the Council by the end of week six, the application will not progress, and at the end of week 12 the Council will deem you to be self-funding and you will be required to make payment of the full cost of care directly to the care provider.

⁷⁵ Or your appointed representative – see Mental Capacity to manage Finance for more information.

⁷⁶ Or your appointed representative – see Mental Capacity to manage Finance for more information.

⁷⁷ Or your appointed representative – see Mental Capacity to manage Finance for more information.

3. Considering your Application and Making a Decision - Within 10 working days

We will check your DPA application form and follow up on any queries that may arise; including ensuring a property valuation has been obtained. We will need to have all information related to your DPA application, including what your intentions are for the property and the equity available. If you have given us all the relevant information we will consider all the information and make a decision.

If your application doesn't meet the criteria for a mandatory Deferred Payment Agreement we will carry out an assessment of whether your DPA is sustainable.

This assessment will address, among other things, the likely period of the DPA, the equity available, the level of any top-up and the period of time you would be able to defer the weekly costs. A top-up would be needed if you chose a care home whose fees are greater than the amount we would expect to pay to meet your identified needs (See the Choice of Accommodation and Additional Payments Policy).

The factors which will be considered when assessing sustainability are:

- the likely period you will want the DPA;
- the equity available;
- the sustainability of any contribution from savings;
- the flexibility to meet future care needs;
- the amount of any top-up payment for preferred accommodation;
- the period of time you would be able to defer your costs for;

We will decide whether the application meets the criteria set out in this DPA policy. If your application is accepted we will write to you to confirm our decision. We aim to do this within a week of receiving your application unless specialist financial or legal advice is required. This is our formal offer of a Deferred Payment Agreement to you. Our letter will also state:

- any conditions attached to the DPA, (for example, insurance requirements of the property).
- estimated administration charges⁷⁸ and interest rate that will be applied to the deferred debt
- when and how often we will send you statements of your deferred debt
- any benefits you may be entitled to claim when you make your own care funding arrangements and how to do this
- your assessed weekly charge which you need to pay on an on-going basis
- the agreed level of your weekly disposable income allowance
- the invoicing arrangements and how to pay your ongoing weekly assessed charge
- that failure to maintain your assessed weekly charge could result in the Deferred Payment Agreement being terminated
- the weekly amount that is agreed to be deferred under the DPA and any other costs agreed to be deferred under the DPA where the agreed security is a

⁷⁸ Clause 9.30, 9.69 and 9.8 of the Care and Support Statutory Guidance

legal charge, and there are joint owners of the property, they must all consent to the placing of a legal charge against the property and, that if any of the joint owners do anything to prevent the legal charge being placed this will result in the offer of the DPA being withdrawn and the Council will immediately notify your care provider that it is ceasing to be involved in the placement.

Our letter constitutes an offer of a DPA to you and will state the date from which the DPA is proposed to start. It will be produced in duplicate, one copy to be signed by you and to be returned as your acceptance of the DPA offer. The other copy is to be retained by you.

The Council's Legal Department will draw up a Deferred Payment Agreement and documents relating to your identified security (usually a legal charge document relating to your property).

These are legally-binding agreements and the Council would usually send these directly to your legal adviser so that you can take advice from your legal adviser before you sign and return the Deferred Payment Agreement and documents (see Financial Information and Advice relating to a Deferred Payment Agreement (DPA)). If you do not have legal adviser the Council will send these directly to you or your financial representative.

You will need to read the Agreement, sign the documents and the DPA and return the Agreement and the documents relating to your security.

If other people need to give their consent as well as you (for example, if your property is jointly-owned, or leasehold), you will need to obtain ALL those necessary signatures on the documents⁷⁹. We will tell you if this applies to you.

You must return the signed Deferred Payment Agreement and relevant signed legal documents (including signatures from other parties where needed) within 28 days. If you don't return the signed Agreement and signed document(s) relating to your security we will not be able to proceed with your DPA and you will need to make your own care funding arrangements. We will contact your care accommodation provider and tell them the date that the Council will stop funding your care. You will be charged the administration costs we incur.

(If the reason for not signing is because of lacking mental capacity, see DPAs for People Lacking Mental Capacity)

If your DPA application is refused we will tell you the reason/s and we will write to you to confirm this decision. You can appeal this decision if you wish - see Appealing the Council's decision about a DPA.

Our letter will explain:

- the reason(s) for refusing your application
- the start date for when you need to make your own care funding arrangements (usually the end of your 12-week property disregard period).

⁷⁹ If you are acting on behalf of the Applicant as their legally-appointed representative and you are also a joint owner of the property being used as security, you will need to give permission both in your own right as a joint owner, and as the representative of the applicant as a joint owner on legal charge documents relating to the property.

- any benefits you may be entitled to claim when you make your own care funding arrangements and how to do this
- how to appeal our decision about your DPA application
- how to make a complaint
- that we will tell your care accommodation provider the date the Council will stop funding your care
- If there are administration costs that you need to pay, how much these are.

Where a DPA application is refused, any administration charges will usually be waived. However this will be considered on a case by case basis and if there is evidence that the application was pursued unreasonably (for example if you insisted on pursuing an application despite our advice about your eligibility), or you belatedly responded to our requests for information needed in order to establish your eligibility, or otherwise put us to excessive trouble, then the charges will be made.

4. Your Deferred Payment Agreement starts

At the start of the DPA we will open up an account to record the following:

- The valuation of your property and the date of this valuation.
- Your agreed weekly deferred amount
- Administration costs and interest charges to be applied.
- The date of the first statement, which will usually be within six months of the start of your DPA⁸⁰ and every 6 months thereafter. These will be produced to match the review of interest rates by the Government (1 January and 1 July each year).

You can request to keep up to £144.00 per week of your income from the date the Deferred Payment Agreement commences⁸¹. Please note this will mean the amount secured against your property will increase quicker.

We may require you to revalue your property when debt deferred reaches 50% of the value of the security, and periodically thereafter. Any cost of revaluation will be re-charged to you through Administration charges.

DPAs for People Lacking Mental Capacity

If a person lacks the mental capacity to give informed consent to a legally binding agreement, it means they are not themselves capable of entering into a DPA. If someone else has been legally-appointed to act for them, that person can apply for a DPA on their behalf. To enter into a DPA on behalf of someone else, that person must be one of the following:

- a deputy appointed by the Court of Protection
- the holder of a registered Enduring Power of Attorney

⁸⁰ Paragraph 11(d)(i)(aa) of the Care and Support (deferred Payment) Regulations 2014.

⁸¹ Clause 6(1) and 6(2) of the Care and Support (Deferred Payment) Regulations 2014.

- the holder of a registered Lasting Power of Attorney (which must include authority to manage the person's property and financial affairs).

The named 'applicant' on the DPA will be the person they act for, but the person acting for them will complete and sign the DPA on their behalf.

If there is no-one legally appointed to act, and the person lacks mental capacity to confer a Lasting Power of Attorney, attempts should be made to identify someone who is willing and able to apply to the Court of Protection to become a deputy for that person, to manage their property and financial affairs. This could be a relative, a friend, a solicitor, or where there is no-one else suitable, the Council.

The person applying to the Court of Protection must state their intent to enter into a Deferred Payment Agreement with the Council. Once the Court of Protection makes a 'First General Order' appointing the deputy, the deputy can enter into a DPA with the Council on behalf of the person. As the deputy application process takes time, the Council has an INTERIM FUNDING POLICY to deal with the period until a deputy has been appointed by the Court and can enter into a DPA with the Council.

If there is no one to act the Social Work team will refer the matter to the Councils Deputyship Team who will make the application to the Court of Protection for a panel Solicitor to be appointed to act on the person's behalf. The Council has an INTERIM FUNDING POLICY to deal with the period until a deputy has been appointed by the Court and can enter into a DPA with the Council.

You can request to keep up to £144.00 per week of the income received by the person from the date the Deferred Payment Agreement commences⁸². Please note this will mean the amount secured against your property will increase quicker.

5. Conditions Placed on Deferred Payment Agreements

We can't agree to a Deferred Payment Agreement if no suitable security is available or you wish to defer a larger amount than (in our assessment as set in The DPA Application Process) you can provide security for.

We will require prompt settlement of your assessed charge during the lifetime of your DPA. (See Default Provisions which deals with the Council's position in the event these contributions are not settled promptly.)

We will require your property to be properly maintained and insured. We may require evidence of your property insurance at any time, including evidence that your insurer has been informed if your property is unoccupied for any period. If maintaining your property means that some of your savings are reasonably required to be used to bring the property up to a suitable standard of maintenance, we will not withhold its agreement to this use of capital unless there is evidence the level of cost is deemed unreasonable.

When an application for DPA is received we may require you to arrange a formal valuation of the property or the share of it owned by you. if you choose not to do so

⁸² Clause 6(1) and 6(2) of the Care and Support (Deferred Payment) Regulations 2014.

and the Council arranges a valuation the Council will charge you the costs of this. (See The Application Process above on how to proceed if these valuations differ.)

We may require you to arrange for a re-valuation when the amount deferred reaches 50% of the value of the security to ensure the level of deferred debt stays within the equity available. Any change in the value will be recorded and the potential impact on the DPA calculated and communicated to you. If you choose not to do so and the Council arranges a valuation the cost of this re-valuation will be charged to you as an administration cost.

If your level of capital changes. The following are examples but are not a comprehensive list:

- If you inherit a sum of money.
- If structural problems are discovered at your property, e.g. subsidence.
- Should a close family member move into or out of your property.

When your deferred debt reaches 75% of the value of the security your Social Worker will review the cost of your care and have a discussion with you about:

- when you might be eligible for means-tested support
- implications on any top-up payments if they are currently included in your care costs (through your preferred accommodation choice)
- potential changes to your welfare benefit entitlements.

Interest & Administration Charges

Interest will be added to the amount you defer from the start of your Deferred Payment Agreement, at the maximum rate of interest set in the Care and Support (Deferred Payment) Regulations 2014⁸³ by the Department of Health. The Department of Health reviews this rate every six months effective from 1 January and 1 July in each year. If the amount you defer includes your administration fees, interest will be applied to those also.

Interest is charged at compound rates. This means that interest is added to the total debt including previous interest charges. Compounding will take place daily. In the event that the equity limit is reached (see Equity Limit above) interest will continue to be added to the deferred debt until the total outstanding is settled.

Interest will continue to be charged after you die and/or after the service ends until the total outstanding is settled.

Administration fees will be charged when a Deferred Payment Agreement is set up and during the lifetime of your Deferred Payment Agreement⁸⁴ – including an annual administration charge. The schedule of Administration fees is shown at Appendix A –

⁸³ This maximum rate is set in the Regulations as the weighted average interest rate on conventional Gilts plus .015% . The rate is reviewed every six months (after the Office of Budget Responsibility publishes its report of Gilts). Clause 9.71 and 9.75 of the Care and Support Statutory Guidance and Paragraph 9 of the Care and Support (Deferred Payment) Regulations 2014.

⁸⁴ Paragraph 10 of the Care and Support (Deferred Payment) Regulations 2014

Schedule of Fees and Charges and will be subject to annual review to take account of inflation.

We add your administration fees will be added to the amount deferred unless you request for these to be invoiced to you separately for immediate payment. You would need to request this when you apply for your Deferred Payment Agreement. Note that unless you pay the administration costs immediately these will be added to your deferred debt and you will be charged interest on the administration costs at the same rate as that applied to your deferred payment.

Six-monthly Statements of Deferred Payment Agreements

The Deferred Payment Agreement starts to run from the date notified in your DPA Offer letter (see The DPA Application Process above).

Statements will be produced in May for the period up to the 31st March and November for the period up to the 30th September each year. These statements will be sent to You or Your Representative.

The statements will show:

- The original property valuation.
- The equity available or maximum amount which can be borrowed under DPA.
- Any revised property valuation
- The revised equity available resulting from this change in the property value.
- Payments received in settlement of the assessed charge.
- The amount of any interest charges and administration costs added to the debt.
- The total deferred debt outstanding including these interest and administration costs.
- Balance of equity still available (after deducting the amount of total deferred debt).
- Approximate period this equity is expected to last.

You may request a statement at other times and we will provide such a statement within 28 days of receipt of such request⁸⁵.

Settlement of the Deferred Debt

If you have placed the property for sale on admission to long-term care, or you have chosen to sell at a subsequent date, the accrued debt will be due for repayment upon the sale of your property. We will calculate the accrued debt and, on receipt of the outstanding monies, we will apply to the Land Registry to remove the legal charge against your property.

In this event your DPA will be terminated and you may become responsible for paying the full costs to your care home ('self-funding') - depending on the balance of funds available after clearing the deferred payments.

⁸⁵ Paragraph 11(d)(i)(cc) of the Care and Support (Deferred Payment) Regulations 2014.

If your property has not been sold at the date of your death we will contact your executor, if known, within six weeks after your death. If the executor is not known and if you had previously identified a third party to help us reclaim the amount deferred, we will contact that third party within the same timescale. If neither is known then the person who was acting as your representative will be contacted. We will advise the person responsible that settlement should be made within 90 days of the date of death or a report provided on progress made and a likely date for settlement.

When making contact we will notify the amount outstanding and how this is made up and whether any further charges may accrue, for example further interest.

Should the executor or administrator of your estate decide to settle the debt without, or before, selling your property, we will accept such settlement and apply to the Land Registry to remove the legal charge or release any alternative security provided.

Default Provisions

The Deferred Payment Agreement is a contract between us (the Council) and you (the Applicant).

- We will agree to pay the full cost of your placement to your care provider and you will either agree to allow a Legal Charge to be placed (and agreement by the other property owners in the case of jointly-owned property), or provide sufficient acceptable security. This security ensures that the Council can recover its outlay on your behalf for the period that your savings and assets, net of the level of deferred contribution, are greater than the upper capital limit.
- **Assessed charges during your DPA period:** you agree to pay your assessed charge in a timely way. We will send you regular invoices for this purpose.

Failure to pay your assessed charge for three months may lead to the Council refusing to continue deferring your ongoing care home payments. We will look at each case on its own facts and will not apply this clause if there are genuine reasons for non-payment, e.g. difficulty in accessing bank accounts, and will agree an alternative timescale.

We will give 30 days' notice of intention to apply this clause explaining how your care needs should be paid for from that date.

- **Reaching your equity limit:** We will also give 30 days' notice of the date that you are likely to reach the equity limit. In this case we will contact your care home and attempt to negotiate a rate that we would usually expect to pay to meet your needs, and will reassess your financial charge due.
- Should your property for which the DPA was arranged become occupied by a relative for whom a statutory disregard may apply, we will establish the reasons behind this change and decide whether it is appropriate to allow the property to be disregarded. If a disregard is agreed we will write to confirm the end date of the deferred payment, confirming the Deferred Debt outstanding, and that interest will continue to accrue until the debt is settled. The Deferred

Payment Agreement may re-commence if the property becomes ceases to be disregarded.

- **Insuring and Maintaining your property:** In the event that we judge that your property is not being properly maintained and/or insured, we will consider whether to refuse to defer future payments for your care. In this event we will give 30 days' notice and explain how your care needs should be paid for from that date. During this 30-day period you may appeal if you believe we have acted unfairly. Your appeal should either demonstrate why the insurance or state of maintenance are in fact satisfactory or what steps are being taken to remedy the failing(s).
- **CHC funding :** if you become eligible for Continuing Health Care (CHC) funding your costs of care will be paid in full by the Clinical Commissioning Group (CCG) therefore your deferred payment agreement will be suspended.
- **Out of area:** if you chose to move to home outside of Bath and North East Somerset Council your deferred payment agreement will be suspended.

Appealing the Councils decision about a Deferred Payment Agreement

If you disagree with the Councils decision about your DPA application you have the right to request a review of the decision. The review will be carried out by The Client Finance Team Manager in the same way as a financial assessment review.

If you wish to appeal you should contact the Client Finance Team with details of your appeal.

The Appeal will be carried out through the same process as the financial assessment appeals.

If you still do not agree with the Councils decision you can make a formal complaint to the Complaints and Data Protection Team Manager
complaints_cypandadults@bathnes.gov.uk

The Councils complaints procedure can be viewed at
<http://www.bathnes.gov.uk/services/your-Council-and-democracy/complaints-and-customer-feedback/complaints-about-adult-social>

If you are not satisfied with the decision made by the Councils complaints team you can refer the matter to the Local Government and Social Care Ombudsman
<https://www.lgo.org.uk/>

The Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH

Telephone: 0300 061 0614

11. Interim Funding Policy

The Council's Deferred Payment Agreement Policy (DPA) is detailed in section 9 of this Framework, however the Council can only agree to a DPA if a person has capacity to enter into the DPA, or if they lack capacity, that someone has the legal authority to enter into a DPA on their behalf.

Where a person is taking steps to become legally-appointed to act on behalf of a person who lacks capacity (for example, applying to the Court of Protection to become a deputy) this process can take several months. During this time, while a person lacking capacity needs a placement in a care home, but the person applying to act for them doesn't have legal authority to enter into long-term funding arrangements, the person applying to become deputy can apply to the Council for an Interim Funding arrangement.

If the Client Finance Team identify that a person going into a care home has capital assets above the upper limit, or has a property, or a beneficial interest in a property, and that the person not only lacks capacity but has no-one with the legal authority to represent them, their Social Worker will take steps to identify someone who can take responsibility for becoming the legal representative (such as a court-appointed deputy).

This would usually be a family member, or friend, or solicitor, or where there is no-one else suitable, the Council can apply to the Court of Protection and act as Deputy or seek the appointment of a panel Deputy.

The circumstances where the Council will consider Interim Funding cannot be set out in a comprehensive list as there is the possibility of a situation arising for the first time, but examples of the type of situation where Interim Funding can be considered are:

- Sudden loss of mental capacity and an application to the Court of Protection is being made to appoint a deputy
- The holder of a Lasting Power of Attorney or Enduring Power of Attorney is not able to act for the person. This could be because that person has died or they have lost mental capacity themselves, and someone else is applying to become a court-appointed deputy.
- a property is jointly owned but the other owner is unable to agree to a legal charge because, for example, they have lost mental capacity and someone is applying to become a court-appointed deputy for this person.
- The property is unregistered but steps are being taken to arrange registration.
- You reside in rented supported accommodation, extra care housing schemes or Shared Lives schemes and the property is being sold and you meet the conditions set out to obtain a Solicitor's Undertaking⁸⁶.

Eligibility Criteria

The Council may consider Interim Funding for you if:

- Your identified needs can only be met in a care home on a permanent basis;
AND

⁸⁶ If the Council agrees interim funding and you reside in rented supported accommodation, extra care housing schemes or Shared Lives Schemes you are not entitled to have the property disregarded for the first 12 weeks you are not resident at the property. Any charge will commence from the day you reside at the alternate accommodation.

- Your financial circumstances indicate that you are responsible for the full cost of your care home accommodation under the Council's Care and Support Financial Assessment and Charging Policy; AND
- You lack mental capacity to manage your finances; AND
- Your representative is not yet legally-appointed to manage your financial affairs; AND
- Your representative has not been able to make an arrangement with your care home to defer your care fees until they become appointed; AND
- Your representative has no other interim funding alternatives available to them while they are waiting for the Court to appoint them as deputy; AND
- Your representative is willing to provide a written undertaking that they are applying to the Court of Protection to become deputy and that once they are appointed deputy by the Court they will either discharge the deferred care fees or (where eligible) enter into a Deferred Payment Agreement with the Council

The Council may consider other situations to offer you Interim Funding if a Deferred Payment Agreement is temporarily not available to you due to factors that you are actively seeking to resolve (for example, if your property is unregistered or for sale) or you reside in rented supported accommodation, extra care housing schemes or Shared Lives schemes⁸⁷. These will be considered on a case-by-case basis.

Your representative who will be acting for you should always seek independent financial and legal advice before making any decisions about whether a Deferred Payment Agreement is the best option for you.

The Council can provide your representative with an Interim Funding Agreement and a Model Deferred Payment Agreement (if appropriate) to look at with their legal adviser. We would advise your representative to seek financial and legal advice as soon as possible so that they have all the information to decide on the most suitable funding arrangements for you, so that they can start making any necessary applications /arrangements.

The Application Process

1. Information given to You or Your financial representative about Interim Funding

You or The person identified as taking forward an application to legally manage the financial affairs of the person entering a care home ("the financial representative") will be sent:

- information about care home charges
- the financial assessment process
- information about Deferred Payment Agreements (if there is property)

⁸⁷ If the Council agrees interim funding and you reside in rented supported accommodation, extra care housing schemes or Shared Lives Schemes you are not entitled to have the property disregarded for the first 12 weeks you are not resident at the property. Any charge will commence from the day you reside at the alternate accommodation.

- Details of Interim Funding arrangements, including interest charged on accrued care home costs
- information about how to obtain Interim Funding
- how to access independent financial and legal advice

We will carry out a Land Registry search where relevant.

2. Financial representative requests Interim Funding (within two weeks)

If the you of your financial representative is unable to make financial arrangements immediately for the care home fees, the Council can consider Interim Funding, the Council will require conformation of the following:

- That they complete and return the interim funding application form within 2 weeks of the date the application form was posted to you.
- that they are taking steps to become legally appointed to deal with the finances and what steps have been taken so far (such as providing confirmation of an application to the Court of protection (COP3, COP1 and COP1A Forms) or confirmation that a conveyancing Solicitor has been instructed to undertake first registration of the property).
- in the cases of property ownership, what are their intended plans for the property and long term funding arrangements
- undertake to keep the Council informed of the process to either settle outstanding charges (ie sale of the property) or agree to a Deferred Payment Agreement and legal charge, or a combination of these if appropriate, once the legal power to act is in place.
- provide full information on property ownership and provide reliable valuation of the property.

3. Considering the Interim Funding request and making a decision (within 10 days)

On receipt of the above information the Council will carry out an assessment of the proposed arrangements and decide whether they are acceptable, sustainable, and provide sufficient guarantee to protect the Council's financial position. The factors which will be considered when assessing this include:

- the likely period the Interim Funding will be needed
- the amount that could be paid from the resident's state benefits by the financial representative appointed by the Department for Work and Pensions to manage the resident's benefits
- the financial representative's intentions for longer-term funding arrangements once they are appointed deputy for the resident
- What alternative funding arrangements have already been considered by the financial representative
- Evidence that the financial representative has obtained, or is actively seeking, independent financial and legal advice about long term care funding arrangements for the resident

The Council will decide whether the financial representative's request for Interim Funding for the resident meets the criteria set out in this Interim Funding Policy – the Adult Social Care Commissioner will review the Interim Funding application to verify that the proposed Interim Funding and the plans to be able to legally act do not place

the Council at undue risk, while taking account of the Council's responsibility to safeguard the individual in need of care.

If the application is accepted we will write to the financial representative to confirm our decision. We will send two copies of the letter, one of which will need to be signed and returned by the financial representative to confirm acceptance of the Interim Funding arrangement. This letter will also state:

- any conditions attached to the Interim Funding (for example, insurance of the property).
- the interest rate that will be applied to the accrued debt through the Interim Funding arrangement
- administration fees applied for monitoring the accrued debt through the Interim Funding arrangement
- When and how often we will send statements of the accrued debt to the financial representative
- any benefits to be claimed by the financial representative on behalf of the resident and how to do this
- the assessed weekly charge which the financial representative will need to pay on an on-going basis (for example, from state benefits)
- the agreed level of your weekly disposable income allowance (if relevant) * the invoicing arrangements and how to pay the ongoing weekly assessed charge
- that failure to maintain the assessed weekly charge from available income could result in the Interim Funding arrangement being terminated
- the weekly amount that is agreed to be accrued under the Interim Funding arrangement and any other costs agreed to be accrued under the arrangement
- The Council's expectations of the financial representative to keep the Council updated with progress of their application to act for the resident
- The Council's expectations of the financial representative to discharge the accrued debt or enter into a Deferred Payment Agreement with the Council when they have been legally-appointed to act for the resident
- that if a Deferred Payment Agreement application is anticipated that where there are joint owners of a property all owners must consent to the placing of a legal charge against the property

If the application is refused the Council will tell the financial representative the reason/s and we will write to them to confirm this decision.

Our letter will explain:

- the reason(s) for refusing the application
- the date from which the financial representative will need to make arrangements on the resident's behalf for care funding (usually the end of a 12-week property disregard period).
- how to appeal our decision about Interim Funding
- how to make a complaint

- that we will tell the care accommodation provider the date the Council will stop funding the care costs

4: Agreed Interim Funding arrangements starts: setting up invoicing and monitoring arrangements to track the accruing costs and interest

The Care Finance Officer will carry out periodic checks on the interim funding arrangement and if no update has been received for three months we will contact the financial representative to request an update.

Once the financial representative has obtained the legal power to act for the resident and provides evidence to us, the Care Finance Officer will write to the financial representative to confirm that the Interim Funding will cease and either the accrued debt (including interest and any administration charges) will need to be paid in full, or the financial representative will need to enter into a Deferred Payment Agreement on the resident's behalf, secured by a legal charge against the resident's property.

Conditions Placed on Interim Funding

Interim funding is provided subject to the following conditions

- You or the person acting for you will return the interim funding application form with 2 weeks of receipt of the application form
- The person acting for you will take all reasonable steps to acquire the legal authority to act. This includes applying to the Department for Work and Pensions to become appointee to manage your state benefits.
- The portion of the charge relating to your state benefits will be paid promptly by your financial representative once they have been appointed to deal with your state benefits.
- Once legal power to act is granted, the Interim Funding agreement will either be converted to a Deferred Payment Agreement or the balance of accrued charges including interest and administration charges is paid in full.

If you fail to comply with the above conditions the Council will not provide interim funding and can, at their discretion, refuse any further application for interim funding.

Interest and Administration Charges

The interest charges will be the same as for Deferred Payment Agreements. The annual administration fee for monitoring the Interim Funding Arrangements will be the same as for Deferred Payment Agreements.

Review of funding

Your interim funding will be reviewed after 4 months, this timeframe should allow for an application to the Court of Protection or first registration of the property.

We will write to you if we require any further information from you and confirm the outcome of the review to you in writing. – the Adult Social Care Commissioner will review the Interim Funding to verify that the proposed Interim Funding and the plans

to be able to legally act do not place the Council at undue risk, while taking account of the Council's responsibility to safeguard the individual in need of care.

Six-monthly Statements

The Interim Funding starts to run from the start date notified (or at the end of a 12-week property disregard periods).

We will produce statements of your accrued debt as in May for the period up to the 31st March and November for the period up to the 30th September each year.

The statement will show the following figures:

- The original property valuation.
- The equity available or maximum amount which can be borrowed under interim funding.
- Any revised property valuation.
- The revised equity available resulting from any change in the property value.
- The total cost of care for the period to the statement date, split between assessed charge and deferred debt.
- Payments received in settlement of the assessed charge.
- The amount of any interest charges and administration costs added to the debt.
- The total deferred debt outstanding including these interest and administration costs.
- Balance of equity still available
- Approximate period this equity is expected to last.

Making an Application for a Deferred Payment Agreement (DPA)

Once your financial representative has obtained the power to act on your behalf, usually by being appointed a deputy, they will need to notify the Care Finance Officer immediately and provide evidence accordingly.

If your financial representative is now able to access sufficient funds on your behalf to settle the outstanding debt then they should arrange to do so without delay.

Where your funds are within your property capital and your financial representative is not able to settle the outstanding debt, your financial representative may consider making an application to the Council for a Deferred Payment Agreement. This should be done as soon as possible. The balance of your accrued charges will usually be transferred into your Deferred Payment Agreement. See DEFERRED PAYMENT AGREEMENTS POLICY

Default Provisions

If we discover that the Court of Protection has approved the appointment of a deputy and the deputy has not contacted us to let us know, we may decide to terminate the

interim funding immediately and seek recovery of the debt (including interest and any administrative costs).

If your financial representative does not settle the amounts it is agreed they can access, for example state benefits in the role of appointee, without good reason, we may consider ending the interim funding.

If your financial representative fails to take the required steps to register your property, if the property is not registered with the Land Registry, we may consider ending the interim funding.

In the event the equity available is no longer sufficient to fund your care, we will stop accruing your ongoing care home costs and reassess your financial charge due. We will attempt to negotiate with your care home a rate that we would usually expect to pay to meet your needs. See Choice of Accommodation and Additional Payments Policy for further information. Interest and any administration charges will continue to be applied to your accrued debt.

When your financial representative has been granted legal authority to act for you, if they are not able to settle the accrued debt in full, they will need to agree to a legal charge against your property (on your behalf) under a Deferred Payment Agreement.

Appeals

If you disagree with the outcome of your financial assessment or deferred payments / Interim Funding Decision you should contact the Care Finance Officer in the first instance to try and resolve any issues as soon as possible. The Care Finance Officer will go through the information with you and check the assessment / decision has considered all the relevant information in line with the Charging and Financial Assessment rules.

If you are still dissatisfied with the outcome the Care Finance Officer will confirm to you how you can lodge an appeal with the Team leader for Care Finance.

If the issue cannot be resolved you can be put in touch with the Councils Complaints team you can make a formal complaint to the Complaints and Data Protection Team Manager complaints_cypandadults@bathnes.gov.uk

The Councils complaints procedure can be viewed at <http://www.bathnes.gov.uk/services/your-Council-and-democracy/complaints-and-customer-feedback/complaints-about-adult-social>

If you are not satisfied with the decision made by the Councils complaints team you can refer the matter to the Local Government and Social Care Ombudsman <https://www.lgo.org.uk/>

The Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH

Telephone: 0300 061 0614

Debt Recovery

If we terminate the interim funding and you are unable to pay the accrued charge for care and support, either in full or in part, you must tell us as soon as possible so that we can discuss this with you and attempt to find a resolution.

If the care and support charges remain unpaid and there is no good reason why you (or your financial representative) are unable to pay your charge, the Council will start debt recovery action⁸⁸

The Council will consider allowing payment of the debt by instalments, we will usually require the full debt to be repaid within a short period and ask you to sign an undertaking confirming the terms of any agreement reached.

If your care and support charges remain unpaid despite the Council's reasonable attempts to recover the debt, we will consider making an application to the County Court to issue a claim to seek a judgment against you, if we do this you could also be liable to pay the Council's legal costs and interest on the debt at a rate agreed by the Judge.

12. Choice of accommodation and top up payments

The Cost of Accommodation

The Council will use your assessment and support planning to identify your Personal Budget – the amount of money that the Council would expect to pay to for care and support to meet your assessed needs.

- For care home accommodation, the Council will identify the expected cost of your accommodation based on the amount that we would normally pay to meet your assessed needs in a residential or nursing home, reflecting the local market conditions.
- For supported accommodation, the housing costs are normally separate to your care and support package. You would own or rent your accommodation and pay for this independently (claiming Housing Benefit and using this to pay the landlord of a shared house if you had a tenancy agreement, for example). We will work with you to make sure you have suitable accommodation for your care and support needs to be met.
- For Extra Care Housing, the Council identify the expected cost of your accommodation as part of your care and support package. This is based on the amount that we would normally pay to meet your assessed needs, reflecting the local market conditions.

When establishing how much the Council would expect to pay for your care and support, we will take account of your individual circumstances such as medical, cultural or dietary needs, to ensure that your needs can be properly met. For some people, such as those with complex learning disabilities, their Personal Budget may need to be much higher to take account of their need for more specialist support.

⁸⁸ Care and Support Statutory Guidance – Annex D: Recovery of Debts

Choosing more expensive accommodation

- **Care homes:** If your preferred care home is more expensive than your Personal Budget for your assessed needs, you will be advised of the higher cost of your choice. You will be given the opportunity to make an alternative choice that fits within your Personal Budget, or to put an arrangement in place to meet the additional cost.
- **Supported accommodation** Because you pay housing costs for supported accommodation (Supported Living, Extra Care Housing, a Shared Lives setting) independently, you may choose more expensive accommodation than we would consider sufficient to meet your assessed needs.

If your choice of more expensive supported accommodation means that we will need to pay more to meet your assessed needs than your Personal Budget (for example, if a Supported Living arrangement includes more expensive “background care” as part of the placement), you will be advised of the higher cost of your choice. You will be given the opportunity to make an alternative choice that fits within your Personal Budget, or to put an arrangement in place to meet the additional cost.

You have a right to choose your accommodation, subject to your personal budget, and the Council will ensure that you are given the opportunity to do so in accordance with the statutory requirements.⁸⁹

Paying for more expensive accommodation

If your preferred accommodation meets all other requirements, we will support you to move to that accommodation that costs more than your Personal Budget says we would expect to pay for your assessed needs, provided that:

- You can arrange for a third party to pay the additional amount - known as the Third-Party Top-Up , or;
- You can pay the additional amount from your own resources - a ‘First-Party Top-Up’.

The rules about the situations where you can pay the additional amount yourself are shown below.

Third-Party Top-Ups

For a Third-Party Top-Up to be put in place, a third-party – such as a family member(s), friend, employer, organisation or charity – must be willing and able to pay the difference between the Personal Budget and the actual cost of the accommodation (or the associated accommodation costs for supported accommodation).

⁸⁹ Clause 8.36 and 8.37 of the Care and Support Statutory Guidance and the Choice of Accommodation Regulations 2014.

To avoid the risk of you needing to move to different accommodation, we will usually discourage a Third-Party Top-Up unless the nominated Third Party can demonstrate that they are willing and able to pay the additional costs on an on-going basis (or up to the duration of the service user's likely time living in the accommodation if it is a short-term arrangement).

Where the Third Party is an organisation

We will require a letter from a legal representative of the organisation confirming that the organisation has the means and capacity to sustain payments for the period required to accompany a signed Third-Party Top-Up Agreement.

Where the Third Party is one or more individuals

A Care Finance Officer will undertake a financial assessment of the individual(s) requiring documentary evidence of financial resources identified to meet the top-up payments, such as bank statement and details of financial commitments. This is to ensure that they have the means and capacity to sustain the payments for the period required. Completion of this assessment along with a signed Third-Party Top-Up Agreement is required before we will agree to someone moving to the more expensive preferred accommodation.

A Care Finance Officer will send you a Third Party Top-Up financial assessment form (Annex C) by post you are required to complete and return this to the Care Finance Team within 14 days of the date the form was sent to you.

We will write to you if we require any further information from you, any additional information requested must be provided within 14 days of the date the information was requested.

The Adult Social Care Commissioner will review the financial assessment form to verify that the proposed Third Party Top-Up do not place the Council at undue risk, while taking account of the Council's responsibility to safeguard the individual in need of care.

We will confirm to you in writing if the Third Party Top-Up is agreed within 14 days from the date that the Council holds all the required information.

If the Third Party Top-Up is agreed you will be sent the Third Party Top-Up Agreement for signature and return, this must be returned within 14 days of the date it was sent to you. The Council will not agree the placement until we hold the signed agreement.

You are required to notify the Council of any change in financial circumstances immediately and the Council reserves the right to review the Third Party Top-Up agreement. The Council may end the agreement in any of the following circumstances:

- You fail to make payment of the Third Party Top-Up amount in full within 14 days of the date of a reminder letter;

- You fail to make three payments of the Third Party Top-Up amount in any 12 month period;
- You notify the Council in writing that you are no longer able to sustain the agreed weekly payments, i.e the Third Party Top-Up amount, due to a change in financial circumstances;
- The Council, on reviewing a change in financial circumstances, concludes you are no longer financially able to sustain the agreed weekly payments.

If the application is refused the Council will tell you the reason/s and we will write to them to confirm this decision.

Our letter will explain:

- the reason(s) for refusing the application
- how to appeal our decision about Interim Funding
- how to make a complaint
- that we will tell the care accommodation provider the date the Council will stop funding the care costs or that the additional room/service is not agreed

If you fail to comply with the above timeframe for providing information the Council will not agree the placement and can, at their discretion, refuse any further application to allow a Third Party Top-Up.

Appeals

If you disagree with the outcome of your financial assessment Third Party Top-Up decision you should contact the Care Finance Officer in the first instance to try and resolve any issues as soon as possible. The Care Finance Officer will go through the information with you and check the assessment / decision has considered all the relevant information in line with the Charging and Financial Assessment rules.

If you are still dissatisfied with the outcome the Care Finance Officer will confirm to you how you can lodge an appeal with the Team leader for Care Finance.

If the issue cannot be resolved you can be put in touch with the Councils Complaints team you can make a formal complaint to the Complaints and Data Protection Team Manager complaints_cypandadults@bathnes.gov.uk

The Councils complaints procedure can be viewed at <http://www.bathnes.gov.uk/services/your-Council-and-democracy/complaints-and-customer-feedback/complaints-about-adult-social>

If you are not satisfied with the decision made by the Councils complaints team you can refer the matter to the Local Government and Social Care Ombudsman <https://www.lgo.org.uk/>

The Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH

Telephone: 0300 061 0614

Review

We review all Third Party Top-Up Agreements at least annually, and sooner where there is a change in your situation.

First-Party Top-Ups (sometimes known as Resident Top-Ups)

In specific circumstances it is possible for you to pay a 'top up' for your preferred accommodation from your own resources. These circumstances are shown below:

- A person entering care home accommodation whose property capital is disregarded for up to the first 12 weeks of the placement **and** who has either sufficient savings to pay the top-up during those 12 weeks, or disregarded income sufficient to pay the top up during those 12 weeks.
- A person entering care home accommodation whose property capital is disregarded for up to the first 12 weeks of the placement **and** who immediately enters into a Deferred Payment Agreement.

You would still be responsible for paying an assessed charge from your capital and income during those 12 weeks. The First Party Top-Up payment will be in addition to your assessed charge shown by your financial assessment. You would need to sign a Top-Up Agreement.

With the Councils permission, payment of a First Party Top-Up can be deferred providing that a Deferred Payment Agreement is agreed between you and the Council before your funding starts.

Your Social Worker will need to request funding from the Councils Panel and obtain this approval before you can be certain that your first party Top-Up and choice of accommodation is guaranteed. you will need to show, amongst other things at the panel meeting, that you intend to apply for a Deferred Payment Agreement (to start after the 12-week property disregard period), and you consent to a first legal charge on your property under a Deferred Payment Agreement from the start of your property-disregard period.

The Council may consider the use of a First Party Top-Up in circumstances other than those set out above. People who would like to apply for a First Party Top-Up in a situation other than those set out above should contact our Client Finance Team to explain the exceptional circumstances in their situation for consideration. The Council may need to seek specialist legal advice on a case by case basis and the costs of this legal advice will be recharged to the individual.

Paying for accommodation

From time to time the Council will review our rates for accommodation. As a result the amount that the Council would expect to pay to meet someone's assessed needs may remain the same, increase or decrease. This may impact on the amount that an individual or organisation is asked to pay as the top-up. Similarly, if the accommodation increases in price (for example, an annual uplift to reflect inflation, or a restructuring of fees because of a new provider), we will have no liability for the

increased charges and will expect the individual or organisation paying the top-up to pay the additional costs above the amount the Council would expect to pay to meet that person's needs.

We will require the person making the third party top-up to pay the additional costs for the accommodation (or associated accommodation costs for supported accommodation) to the care provider, if payments are not maintained the care provider will seek to recover any arrears from the Council and the Council will recover the debt from the person who signed the third party top-up agreement (see Annex A).

When a person/organisation takes on a Top-Up, they assume the contractual responsibility for the duration of the person's residence in the accommodation to pay the difference in fees between the amount we would usually expect to pay to meet your assessed needs and the actual cost of your accommodation.

The Council will advise the person/organisation in writing that fees are not fixed or guaranteed to remain at the same level, and that the contribution of the resident or third party may rise faster than the Council's.

The third party will be required to enter into a Third Party top-Up Agreement (contract) which is legally binding and enforceable through the Courts (see Annex A).

The Council will also advise that we have no liability for debts accrued by a person/organisation due to non-payment or a shortfall in payment. We will notify people/organisations of the likely consequences if they fail to maintain payments. These may include legal action to recover the accrued arrears and/or you having to move to other accommodation (unless after an assessment of need, it is shown that your assessed needs can only be met in the current accommodation).

The Council has the right, subject to notice, to terminate the contract should the top-up payments cease to be adequate.

If the care home stops providing satisfactory care or is otherwise in breach of the terms and conditions of our contract with them, we reserve the right to move you to alternative accommodation. If your needs change significantly you will be re-assessed by a social worker to see whether your current accommodation continues to meet your needs.

People who pay the full cost of their care and support

If we arrange care and support on behalf of a self-funder in supported accommodation, they will have the same right to a choice about the provider of their accommodation, and the Council will support this as set out above. The Council will enter into a contract with the provider(s) on the person's behalf and manage the payment and invoicing arrangement for the person paying the full cost of their care and support.

If someone paying the full cost of their care and support has made their own private arrangement for services, the provider may take any action needed to obtain outstanding payments including legal action against the person or third-party who signed the contract and agreed to make payments but has failed to do so. The provider can also cancel the contract and give notice requiring the person to leave their accommodation.

If you pay the full cost of your care and support we will encourage you to consider what will happen if, over time, your savings/investments reduce and you become eligible for financial support with your care and support costs from the Council. If you have existing accommodation that is more expensive than we would usually expect to pay, this may result in the resident having to move to other accommodation, unless arrangements can be secured by way of another alternative such as a Third-Party Top-Up. In this instance, we will support you to find an alternative placement of your choice, provided this meets the Council's criteria around suitability, availability, conditions, cost and quality. If a reassessment shows that your needs can only be met in the current accommodation, we will endeavour, by way of negotiation, to make up the reasonable cost difference between your assessed charge and the accommodation's fees.

Existing residents

If you currently live in accommodation that is more expensive than the Council would usually expect to pay to meet your assessed needs, a review of your situation may result in you having to move to other accommodation, unless arrangements such as a Third-Party Top-Up can be put in place to meet the additional cost.

If a reassessment shows that your needs can only be met in the current accommodation, the Council will endeavour, by way of negotiation, to make up the reasonable cost difference between your assessed charge and the accommodation's fees.

13. Funding Agreement

The Council is responsible for public funds and therefore must ensure spending is equitable. The Council has a process for the approval of funding. In certain circumstances before the Council can agree funding you will be required to obtain the agreement from a senior manager or Panel.

Your Social Worker will advise you if you need to take any request to Panel. The list below is examples of circumstances where Panel approval will be required (this list is not exhaustive):

- The cost of the accommodation requested is above the usual Local Authority payment rate.
- The accommodation costs are to be paid by a first party top-up
- The level of the care package is above the personal budget amount identified.

The Social Worker will inform you of their managers or the panel's decision in writing.

If you do not agree with the Councils decision you can make a formal complaint to the Complaints and Data Protection Team Manager
complaints_cypandadults@bathnes.gov.uk

The Councils complaints procedure can be viewed at
<http://www.bathnes.gov.uk/services/your-Council-and-democracy/complaints-and-customer-feedback/complaints-about-adult-social>

If you are not satisfied with the decision made by the Councils complaints team you can refer the matter to the Local Government and Social Care Ombudsman
<https://www.lgo.org.uk/>

The Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH

Telephone: 0300 061 0614

14. Direct Payments

The Council has a separate policy in respect of Direct Payments. Please visit www.bathnes.gov.uk

If you would like a hard copy of the policy please contact
client_finance@bathnes.gov.uk or by post to

Client Finance Team,
 Lewis House,
 Manvers Street,
 Bath, BA1 1JG

15. Equality Impact Assessment

The Adult Care Services and Commissioners have considered the impact that adopting this Charging and Financial Assessment Framework and the individual policies within it may have on the diverse communities in Bath and North East Somerset, and in particular residents in possession of 'protected characteristics' as set out in the Equality Act 2010.

The consultation will be reviewed and further information provided once concluded.

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The Councils acknowledges that there could be some negative impact on older people and those with disabilities, however the safeguards placed within the charging framework such as the minimum income guarantee and on-going monitoring of the use of services will minimise this.

16. Reviewing the Charging and Financial Assessment Framework

Annual review of the rates and amounts will ensure these are consistent with inflation or other relevant changes, which may occur.

The document may be subject to change through the departmental management team or the commissioners, or as part of an overall review of the entire Charging and Financial Assessment Framework Policy by the Council if new Legislation, Guidance and Regulations are introduced .

The Care Act 2014 and Statutory Guidance sets out changes which are permissible in line with Government published rates and changes to benefits.

17. Annex A

Working Out your Charge

How we work out your weekly charge

There are five steps. When the CFO meets you they will explain all of this, and give you the chance to ask questions.

Step 1: We work out your **Weekly income**. This includes:

- Most state benefits, including Personal Independence Payment (PIP), Attendance Allowance and Disability Living Allowance (care component).
- Carers Allowance.
- Retirement pensions.
- Any applicable charge on your savings – see above.

But this does not include:

- Earnings from paid work.
- Disability Living Allowance (mobility component).
- Child Tax Credit.
- Disabled Person's Tax Credit.
- Pension Credit - Savings Credit element.

Step 2: We then work out your allowances, money that you keep to make sure you have enough to live on. There are **four separate allowances**:

- a. The Government has set standard allowances for your **general living expenses**. For example if you have reached qualifying pension age, this is £189.00 a week.
- b. **Housing costs** you pay. This will be your rent or mortgage interest costs that are not covered by Housing Benefit and Council Tax costs that are not covered by Council Tax Support.
- c. **Extra costs that relate to any disability you may have (only for people not in a care home)**. For example, you may have higher dietary costs. This is called your Disability Related Expenditure or DRE. We will include the costs of:
 - Telecare equipment including a community alarm
 - Privately Arranged Domestic Help
 - Special Diet
 - Special Clothing or Footwear
 - Additional Laundry Costs
 - Additional Wear & Tear of Clothing, Footwear or Bedding
 - Additional Heating (taking into account receipt of the Winter Fuel Payment)
 - Maintenance or Repair of Equipment
- d. If you receive the higher rate of Attendance Allowance / Personal Independent Payment (PIP) or Disability Living Allowance (care component), and Bath and North East Somerset Council does **not** pay for any care at night for you, we will take away £27.45 from your income total. This is **the**

difference between higher and lower rates of these benefits. This is because you are given this extra allowance specifically to pay for care at night.

Step 3: To work out **what you pay each week**, we add up your total income from step 1 and take away the eligible allowances from step 2 to give us your **“Assessable Income”**.

Step 4: We then compare this assessable income with the **total weekly cost** for the service or services you are receiving, or the amount of your personal budget. You will pay the lower of the two amounts.

For example:

Your assessable income charge is **£40** a week.

You receive two hours of care a week that costs a total **£32** per week.

£32 is less than £40 so you would only pay the lower charge of **£32**.

In this example it has been calculated that you would be a self-funder (being able to pay the full cost of the care and support you receive) and would have to make your own arrangements for your care. The Social Worker can help you to make arrangements if you would like.

If you receive 5 hours of care a week, at a total cost of £84 per week you only pay your calculated charge, in this example £40.

Step 5: The care charge that we have worked out is a fixed weekly one. If you have less or more care hours for a short time, your weekly charge will stay the same. If you feel that you are at a disadvantage by this, please contact your Social Worker. If there is a permanent change to the number of care hours, the amount that you are asked to pay may change.

If you have more than one community service, for example, homecare and day care, the weekly charge that we work out will be the most you can pay for all of these services together.

Financial Assessment Allowances 2018-2019

| | <u>Level of 'Minimum Income Guarantee' for a Service User who is single (or living alone)</u> | <u>Level of 'Minimum Income Guarantee' for a Service User living with a partner</u> |
|--|---|---|
| Age 18 or over, up to qualifying age for Pension Credit | £131.75 per week | £100.55 per week |
| Age 18 or over, up to qualifying age for Pension Credit and qualifying for Enhanced Disability Premium | £151.45 per week | £114.70 per week |
| Reached or over qualifying age for Pension Credit | £189.00 per week | £144.30 per week |
| Eligible for Carer Premium | An additional £43.25 per week | |
| Responsible for a child, and a member of the same household as that child | An additional £83.65 per week | |
| Disability-Related Expense Standard Allowance (Non- Residential Services) | £5.00 per week | |
| Statutory Personal Expense Allowance (in a Care Home) | £24.90 per week | |
| Maximum Savings Disregard ⁹⁰ (in a Care Home if aged over 65 + and qualifies for savings disregard) | £5.75 per week | |
| Disposable Income Allowance (Deferred Payment in place) | Up to £144.00 per week | |

⁹⁰ Savings Disregard is calculated on an individual basis in accordance with the Care and Support (Assessment of Resources) Regulations. The maximum amount is shown here for information only.

Disability Related Expenditure Guide

If you receive Attendance Allowance or Personal Independence Payment or Disability Living Allowance an allowance is made in your non-residential financial assessment for additional expenses due to disability or medical condition. The Council apply a standard allowance as shown in the Financial Assessment Allowances above unless you request the Social Worker carry out a full assessment of your disability-related expenses.

This guide sets out the standard or maximum allowances the Council use for a range of disability related expenses, if that extra cost is incurred and is needed to meet your specific need due to a medical condition or disability, as identified in your care and support assessment.

If you have one or more of the expenses listed the Council will usually allow the actual amount you spend up to the maximum amount indicated. The Council will only consider a higher allowance in exceptional circumstances.

Costs for disability related services that support the whole household (like a cleaner) will be shared equally between all adults in the household (unless you have a good reason for us to consider a different way of sharing costs).

Where a service or item is made up of different elements the Council will only consider costs for the part(s) that meet a disability related need.

Allowances for the maintenance of special equipment needed due to a disability or condition will be based on the conformation in your care plan that the equipment is required to meet your identified needs.

You must keep bills, invoices and statements to support your claim for disability related expenses. If you can't produce this evidence the Council will use our discretion to decide if your claim is reasonable.

You can find details of exclusions at the end of this list.

| DISABILITY-RELATED EXPENSE ITEM | AMOUNT CONSIDERED IN ASSESSMENT | EVIDENCE REQUIRED |
|--|---|--|
| Community Alarm System | Actual cost paid unless included in Housing Benefit award | Bills from provider or regular entries on bank statements |
| Private domestic help - where Adult Care assessment confirms this is necessary due to disability or medical condition and is not provided through Council-arranged support. This may include cleaning, shopping) | Actual cost paid up to £14.00 per week for single person household, or cost proportionately divided by the number of other adult household members. | Bills/receipts from provider for at least 4 weeks |
| Additional laundry and replacement bedding costs (where more than 4 loads washing/week needed due to incontinence or other disability-related/medical reason) | A maximum amount of £5.00 per week. | Adult Care assessment confirms incontinence or other condition requiring need for additional laundry and more frequent replacement of bedding. |
| Essential equipment maintenance / repair (if not maintained by adult care) (such as stair lift maintenance) | Actual cost of maintaining Specialist equipment at the discretion of Adult Client Finance and confirmation by Occupational Health. | Bills/ Receipts from provider, or entries on bank statements, or maintenance contract Showing costs. |
| Specialist clothing and Footwear and replacements Due to wear and tear. | Reasonable amount based on the care plan and subject to the discretion of the Council. | Receipts / bank statements |
| Additional heating allowance | Actual gas and electricity paid over one year minus the average amount annually | Bills from provider |

Fuel amounts⁹¹:

Flat/Terrace

Single occupancy £1,311
Couple/shared occupancy
£1,729

Semi-detached

Single occupancy
£1,392.44
Couple/shared occupancy
£1,835.18

Detached

Single occupancy
£1,694.10
Couple/shared occupancy
£2,233.18

Other disability related expenses may be allowed with good reason and proof of costs, subject to the care plan confirming the expense is related to disability.

Continence products are not considered a disability related expense as products are available through the NHS/CCG free of charge.

Exclusions:

We won't consider costs incurred for:

- General items or services required for daily living used by the general population
- Garden maintenance, chiropody and basic domestic tasks.
- Privately arranged care and support
- Medical prescriptions and chemist items
- Equipment – this is available through community equipment
- Any item or service met by a payment from a Grant (e.g. Disability Facilities Grant) or where another funding source has been provided
- The difference between the actual cost and a lower cost alternative where we consider it was reasonable for a lower cost alternative;
- Structural or landscaping work (e.g. tree surgery, path laying or re-laying) in gardens or to buildings unless;
 - Disabled Facilities Grant contributions apply in respect of the works carried out
 - Any works to help prevent falls (e.g. installing hand rails or repairing footpath)

⁹¹ Average annual amounts based on good practice guide issued by the National Association of Financial Assessment Officers

- The modifications to the garden or building are essential for you to be able to use/store securely scooter or wheelchair that you need to use, or to provide secure storage for a scooter and the facility is used as such. In this case, the amount will be calculated as if the modifications were equipment with a suitable life span applied.

Sample Interim Funding Agreement

Interim Funding Agreement for Care Home Fees

Application form

Before making this application Bath and North East Somerset Council strongly advise you to take independent legal and financial advice.

If you are unable to apply for a Deferred Payment Agreement for someone who would otherwise be eligible for a Deferred Payment Agreement because you are not yet legally-appointed to deal with their financial affairs you can apply to the Council for an 'Interim Funding Arrangement' to help towards care home costs until you have the legal authority to apply for a Deferred Payment Agreement; OR

If you are applying for interim funding whilst the property is sold or first registration is obtained in accordance with our Interim Funding Policy.

If we agree to an Interim Funding Arrangement we will charge interest on the care charges that accrue during the Interim Funding period plus an administration fee (to cover the costs of setting up and managing the arrangements) . See Annex C of our Charging Framework Charges for Interim funding and Interest Rates for details (www.....).

Interest and administration charges can be accrued with the care home charges to either be repaid when legal-authority is granted to access financial resources, or secured against the property through a Deferred Payment Agreement, or paid when the property is sold.

There may be other situations in which you can apply to the Council for an 'Interim Funding Arrangement', please see Part 10 of our Charging Framework for details (www.....).

You are required to complete and return this form to the Care Finance Officer within two weeks of receiving this form. If the form is not returned within 2 weeks the Council may decline your request for interim funding without further consideration.

Section 1: Personal Details

Please enter your name or the name of the person on whose behalf you are applying for an Interim Funding Agreement.

Title: _____ First Name: _____ Last Name: _____

Section 2: Personal details of Financial Representative (if applicable)

Title: _____ First Name: _____ Last Name: _____

Email: _____

Telephone number: _____

Relationship to person named in Section 1: _____

Have you taken legal/financial advice before making this application: Yes / No

If you have not taken legal / financial advice please confirm you wish to proceed without obtaining legal / financial advice: Yes / No

Have you applied to be Lasting Power of Attorney or Deputy: Yes / No

If yes please confirm the date the application was made to the Court of Protection:

If yes please state when you expect to get legal authority to deal with the financial affairs of the person named in Section 1: _____

If you are not acting for the person named in Section 1 under an LPA or Deputyship order please confirm the name and contact details of the person who is (please note the named person will be required to complete the request for Interim Funding:

Name: _____

Address: _____

Email: _____

Telephone Number: _____

Section 3: Reason for requesting Interim Funding

☐

a. The person named in Section 1 has lost capacity to manage their financial affairs and no one has yet been appointed to deal with their financial affairs.

☐

b. The property is unregistered and an application for first registration has been made to the Land Registry on _____ the instructed conveyancing Solicitors (including address and contact details) are:

Name: _____

Address: _____

Email: _____

Telephone number: _____

☐

c. The property has been sold and completion will take place within 6 weeks. The instructed conveyancing Solicitors (including address and contact details) are:

Name: _____

Address: _____

Email: _____

Telephone number: _____

(Interim Funding will only be agreed if the above Solicitors provide an Undertaking to pay the debt on completion of the sale of the property).

☐

d. Other please state: _____

If the application for Interim Funding is made under points a and b above you will be required to enter into a Deferred Payment Agreement when you obtain the legal authority to do so.

Part 4: Property information

Does the person in Section 1 own/part own a property: Yes / No

Property address:

Does any other person have an interest in the property: Yes / No

If yes please provide the name, address, email and telephone number:

Name: _____

Address: _____

Email: _____

Telephone number: _____

Is there a mortgage on the property: Yes / No

If yes please provide the name and contact details of the mortgage company and the current outstanding debt:

Name: _____

Address: _____

Email: _____

Telephone number: _____

Current outstanding debt: _____

Please confirm you are agreeable to the Council contacting the mortgage company to seek confirmation of the debt and postponement of their charge (Please see specific property issues www.....): Yes / No

If the property is on the market please provide the following information:

Sale price agreed: _____

Date sale agreed: _____

Expected completion date of sale: _____

Part 5: Your declaration for your application for an Interim Funding Agreement

Read and sign the declaration below to complete your application

1. ☐ I confirm that the property identified in Section 4 is on the market and a sale has been agreed I confirm that I wish to apply for an 'Interim Funding Agreement' for the person named in Section 1 with Bath and North East Somerset Council: OR

2. ☐ I confirm that I have applied / will apply (delete as appropriate) to become the legally-appointed representative for the person named at Section 1 of this application and I undertake to complete any further actions as appropriate in order to become the legally-appointed representative; OR

3. ☐ I confirm that an application for first registration of the property has been made in respect of the property at Section 4, I confirm that I wish to apply for an 'Interim Funding Arrangement' for the person named in Section 1 with Bath and North East Somerset Council.

4. I confirm that I understand that if my application for an Interim Funding Arrangement is approved, the Council will:

(a) Send invoices to me in respect of the person named at Section 1, for the full cost of the care home fees for that person

- (b) Allow those invoices to accrue until I have legal authority to act for the person named at Section 1
- (c) Charge interest on the accruing invoices at the rate published in the Council's Charging Framework
- (d) Charge an administration fee to cover the cost of making the Interim Funding arrangements (at the rate published in the Council's Charging Framework
- (e) Expect repayment of the accrued charges (care costs, interest charges and administration charges) as soon as I have legal authority to act for the person named at Section 1, unless I apply for a Deferred Payment Agreement as the legally-appointed representative for the person named at Section 1.

4. I confirm that when/if I am granted legal authority to act for the person named in Section 1 I undertake to repay Bath and North East Somerset Council the full amount owing to Bath and North East Somerset Council in respect of the person named in Section 1, including any accrued interest charges and administration cost charges associated with an Interim Funding Arrangement; OR (delete as appropriate)

5. I confirm that when the property at Section 4 is sold I undertake to repay Bath and North East Somerset Council the full amount owing to Bath and North East Somerset Council in respect of the person named in Section 1, including any accrued interest charges and administration cost charges associated with an Interim Funding Arrangement (delete as appropriate)

6. I confirm that I understand that when/if I am granted legal authority to act for the person named in Section 1, should I wish to apply for a Deferred Payment Agreement with the Council, I will need to make my application to the Council within 5 weeks of receiving legal authority to act for the person named in Section 1, using the property listed in this application as security against the accrued interim debt which will be listed within a Deferred Payment Agreement (delete as appropriate)

7. I confirm that I undertake to keep Bath and North East Somerset Council Care Finance Team updated with the progress of my application(s) to become the legally-appointed representative to act for the person in Section 1/First registration of the property at Section 4/Sale of the property at Section 4 (delete as appropriate)

8. I understand that I shall be responsible for:

- (a) ensuring that the property owned by the person named in Section 1 is secure, insured and maintained appropriately throughout an Interim Funding Arrangement; and
- (b) ensuring that the person named in Section 1 receives the statutory weekly Personal Expenses Allowance from their DWP pension/benefits while an Interim Funding Arrangement is in place; and
- (c) making payments to Bath and North East Somerset Council towards any assessed weekly Charge that is over and above the agreed Personal Expenses Allowance where the DWP has appointed me to manage the state benefits for the person named in Section 1.

9. I understand that Bath and North East Somerset Council will invoice me for the costs noted above and I agree to pay those invoices in a timely manner.

10. I confirm that I have been told of the need to take independent legal and financial advice before entering into an Interim Funding Arrangement with the Council and when making decisions about options for funding long-term care.

11. I confirm that the information I have given on this form is true and accurate to the best of my knowledge.

12. I have read this application for an Interim Funding Arrangement and the terms of this declaration.

13. I understand that Bath and North East Somerset Council will use the information I have provided for the purpose of deciding on this application for an Interim Funding Arrangement for the person named in Section 1. I understand that the Council will only share information where the legal framework allows it and as stated in the Privacy Notice which can be found on the Council's website at <http://www.bathnes.gov.uk/services/your-Council-and-democracy/data-protection-and-freedom-information/Council-privacy-notice-0> and for the detection and prevention of fraud as required by regulations and statute.

Jurisdiction

Each of the parties to the Agreement irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in connection with this Agreement or its formation or validity and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England and Wales.

Your full name: _____

Signature: _____

Date: _____

Please return this form by email to client_financeteam@bathnes.gov.uk or by post to

Client Finance Team,
Lewis House,
Manvers Street,
Bath, BA1 1JG

Sample Third Party Top Up Agreement

THIRD PARTY CONTRIBUTIONS' AGREEMENT

THIS AGREEMENT is made on 201[]

BETWEEN

Bath and North East Somerset Council having its principal office at
Council

[NAME OF PROVIDER] [having its registered office at]
Provider

[NAME OF THIRD PARTY MAKING THE TOP-UP CONTRIBUTIONS]

[of] Third
Party

WHEREAS

1. [Name of Resident] [of]
hereinafter called "the Resident" wishes to reside at a care home at [Name
and address of care home] hereinafter called "the Home" which is a care
home operated by the Provider
2. The Provider is willing to provide the Resident with accommodation and care
under and in accordance with the Council's Framework Agreement for the
Provision of a Care Home Service (date *****).
3. The Third Party has agreed to pay to the Council the Top-Up Contributions
(as hereinafter defined)
4. The Council is willing to nominate the Resident for the provision of a Care
Home Service at the Home and to enter into an Individual Resident
Arrangement with the Provider under and in accordance with the Framework
with respect to the Resident subject to the Third Party agreeing to pay Top Up
Contributions.

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO as
follows:-

5. Definitions

In this Agreement the expressions already defined shall have the meanings assigned to them and the following expressions shall unless the subject or context otherwise requires have the following meanings –

Framework The Council's Framework Agreement for the Provision of a Care Home Service (date *****)

Third Party The person or persons who has or have entered into this Third Party Contributions Agreement and agreed to pay the Top Up Contributions

Top Up Contributions The difference between the Provider's charges for providing accommodation and care for the Resident at the Home and the Resident's assessed Care Charge (if any) and the Councils contribution, each as from time to time applicable

Payment of Top Up Contributions

The Third Party agrees to pay the Top Up Contributions (which at the date of this Agreement is £ [INSERT AMOUNT] per week).

This should be paid on a monthly basis to the Council unless alternative arrangements are agreed in writing. The Council is responsible for notifying the Third Party making the Top Up Contributions of any changes in the amount payable.

6. For the avoidance of doubt it is hereby **DECLARED AND AGREED** between the parties as follows –
 - a. The Third Party will complete and return to Client Finance Team a financial assessment form within 14 days of the date the form was sent to the Third Party.
 - b. This Third Party Contributions Agreement will be reviewed by the Client Finance Team in conjunction with the arrangements for reviewing the Resident's financial assessment (Care Act 2014 Paragraph 17). These are reviewed by the Councils Client Finance Team following a change in circumstances or in any event on an annual basis.
 - c. The Third Party recognises that the Provider's charges may increase and that in these circumstances the amount of the Top Up Contributions payable by the Third Party is likely to be raised accordingly having regard to the Resident's personal budget..
 - d. The Third Party shall notify the Councils Client Finance Team immediately of any changes in their circumstances which could affect their ability to pay Top Up Contributions. This may trigger a review of this Third Party Contributions Agreement and the arrangements made for the provision of accommodation and care for the Resident at the Home.
 - e. In the event of the failure of the Third Party to pay the Top Up Contributions in full the Council will have the right at any time by giving at

least twenty-eight (28) days' written notice to withdraw the Resident from the Home and to place the Resident in alternative care home accommodation that is affordable within the amount identified in the Resident's assessed care plan.

- f. Any outstanding sums due under this may be recovered from the Third Party through the County Court. The Council will send a letter attached hereto at Appendix 1 (**Reminder Letter**) requesting that the missing payment is made within 14 days of the date of the Reminder Letter. If no payment is received after this time, the Council will refer the matter to its debt recovery team for commencement of the Council's standard recovery procedure. This may result in enforcement action before the County Court where we will ask that interest is added to the debt being accrued.
- g. If any more than three Reminder Letters are sent within any 12 month period, the Council shall be entitled to exercise its rights to terminate this Agreement as set out below in the section headed 'Termination of this Agreement'.
- h. The Provider agrees with the Council that it will use all reasonable endeavours to keep the Council advised of any delay in or change in the pattern of payment of Top Up Contributions by the Third Party.

Termination of this Agreement

The Council may bring this Agreement to an end if any of the following occurs:

1. The Third Party fails to make payment of the Third Party Top-Up Amount in full within 14 days of the date of a Reminder Letter.
2. The Third Party fails to make three payments of the Third Party Top-Up Amount on time in any 12 month period.
3. The Third Party notifies the Council in writing that you are no longer able to sustain the agreed weekly payments, i.e. the Third Party Top-Up Amount, due to a change in your financial circumstances.
4. The Council, on reviewing a change in the Third Parties financial circumstances, concludes you are no longer financially able to sustain the agreed weekly payments.
5. The Third Party notifies the Council in writing that you would like the Agreement to end.

In the event that one of the termination triggers detailed above arises and the Council chooses to exercise its right to bring this Agreement to an end, it is likely that the Resident will be required to move into alternative Accommodation where such Accommodation would be suitable to meet their needs and the cost of which is within their personal budget.

Before any decision to move the Resident is taken, a new assessment of need will be undertaken. The final decision as to whether they will need to move to alternative accommodation will rest with the relevant manager who will take into account all of the circumstances of the case including having regard to their wellbeing.

The Council has to consider other Residents and its resources as a whole when funding Accommodation. Only in exceptional cases (e.g. the person has been diagnosed as being close to end of life) will considerations relating to the wellbeing of the Resident make it appropriate for the Council to continue Accommodation that requires it to pay more than a Resident's personal budget.

The Council wishes to make clear that, simply because it could be argued that it would be in the Resident's best interests to remain living at the Accommodation, this will not be a factor that compels the Council to maintain the Accommodation if the Third Party are unable to continue paying the Top-up Amount.

If the Council decides to terminate the Agreement, it will serve notice on the Third Party providing the Third Party with the same period of notice as is required in accordance with the contract it has with the provider. In most cases the period of notice that the Council is required to give to a provider will be 28 days and on the assumption that this is the position in this case the Resident will be required to leave the Accommodation no later than the end of the 28 day notice period.

During the 28 days, or such other period of time as is prescribed in the contract with the provider of the Accommodation, the Council will commission care in alternative Accommodation that is willing to meet the Resident's assessed needs for a sum that is equal to or within their personal budget. This will be in line with the usual arrangements put in place for Residents who have not previously received the benefit of a Third Party Top-Up.

Joint Third Party Arrangements

If this Agreement involves more than one Third Party making contributions to the Resident's care costs, the duties arising are joint and several. This means that if one or more of the Third-Parties fails to pay their agreed contribution, the other Third-Parties to the agreement will be liable to the Council for the full amount of defaulting party's share in addition to their own share.

In entering into this Agreement, the Third Party agrees to be liable for the contributions of the other Third Parties, should they fail to maintain their contributions. If the remaining Third Parties are unable to pay the Top-up Amount in full, the Council will consider the need to exercise its rights to terminate this agreement. For the avoidance of doubt the Third Parties entering into this agreement are as follows:

- 1.
- 2.

General

This Agreement is legally binding and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law.

We would recommend that you take independent financial advice before committing to the obligations to make payments as required under this Agreement. As this

Agreement is legally binding upon you, you may also wish to take independent legal advice on its suitability.

Jurisdiction

Each of the parties to the Agreement irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in connection with this Agreement or its formation or validity and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England and Wales.

AS WITNESS the hand of the Third Party and the hands of the duly authorised representatives of the Council and the Provider the day and year first before written.

I confirm I have been given sufficient information and advice to be able to make an informed decision before entering into this Third Party Top Up Agreement.

By signing this self-certification form I confirm if I have chosen not to provide details of my financial circumstances via a light touch financial assessment I instead declare I am willing and able to afford and sustain my commitment for the likely duration of the agreement, and that I have read and fully understand the terms and conditions.

Signed by..... Dated.....

Print Name.....

Name: (Name of Council Budget Holder)

Signed: (Signature of Council Budget Holder)

on behalf of Bath and North East Somerset
Council

Name: (Name of Provider's representative)

Signed: (Signature of Provider's representative)

on behalf of [Name of Provider]

Client Finance Team, Lewis House, Manvers Street,
Bath, BA1 1JG

Sample Third Party Top Up Reminder Letter

Dear

THIRD PARTY TOP UP AGREEMENT – PAYMENT REMINDER

We refer to the Top Up Agreement (the Agreement) into which you entered on

We note that we have not received the Top-up Amount due to be paid on in the sum of . We anticipate that this is a simple oversight on your part and would request that you make the outstanding payment within 14 days of the date of this letter.

If no payment is received after this time, in accordance with the terms of the Agreement, Bath and North East Somerset Council will refer the matter to its debt recovery team for commencement of Bath and North East Somerset Council standard recovery procedure. This may result in enforcement action before the County Court, when Bath and North East Somerset Council will ask for interest to be added to the outstanding debt.

If payment is not received within 14 days, DCC shall be entitled to exercise its rights as set out in the section headed 'Termination of this Agreement' within the Agreement.

As you will know from the Agreement, if you do not maintain payments, it is likely that the will be required to leave and will be placed in alternative residential care setting at a cost that is within their personal budget. We would very much hope that such action would not be required but your continued payment is vital to ensure that this does not happen.

If payment is made, Bath and North East Somerset Council will confirm receipt and this Reminder Letter will be logged on our records for the purposes of monitoring the frequency with which late payment arises. If any more than three Reminder Letters are sent within any 12-month period, Bath and North East Somerset Council shall be entitled to exercise its rights to terminate this Agreement as set out in the Agreement in the section headed 'Termination of this Agreement'.

If you are now unable or unwilling to maintain the Top-up Amount in accordance with your obligations under the Agreement, please contact us immediately in order that we can discuss the options for the service user and inform you of your options with regard to the termination of the Agreement.

We look forward to receiving payment within the next 14 days.

Yours sincerely

18. Annex B

Capital Limits

| Level of Capital or Savings | How this is considered in Financial Assessment |
|-----------------------------|---|
| £0 - £14,250 | Disregarded |
| £14,251 - £23,250 | Tariff income is calculated at the rate of £1 for every complete £250, or part £250 |
| £23,250 + | Full cost of care applies at or above this level of capital or savings – self funding |

19. Annex C

Charges for interim funding and Interest Rates:

Annual Interest Rates on Interim Funding:

| | |
|---------------------------------|---------------------------------|
| 1 January 2018 – 30 June 2018: | 1.45% yearly rate charged daily |
| 1 July 2018 – 31 December 2018: | 1.85% yearly rate charged daily |
| 1 January 2019 – 30 June 2019: | 1.65% yearly rate charged daily |

Charges:

| | |
|---|------------------------------|
| Formal valuation | At cost (+VAT if applicable) |
| Review of debt and interim statement | £105.00 (+VAT if applicable) |
| Costs of any specialist legal and/or financial advice obtained by the Council (if required) – the Council will provide an estimate in advance | At cost (+VAT if applicable) |

- Value Added Tax (VAT) – the legal and administrative costs quoted above are exclusive of VAT. VAT will be charged if applicable. DPA's which meet the national mandatory DPA requirements to be secured by a first legal charge are not currently subject to VAT.
- VAT does not currently apply to Land Registry statutory fees. Land Registry fees are set and reviewed by the Land Registry and subject to change.
- The charge for review of the debt and interim statement will be increased annually in April line with CPIH.

Sample Financial Assessment Form

CALCULATION OF FINANCIAL CHARGE FORM

This form should be used for everyone receiving assistance from the Local Authority including Personalised Budgets and Residential placements.

SECTION 1 – SERVICE USER’S PERSONAL DETAILS

| | | | |
|---|--|------------------------|---|
| Marital Status: Married / Single / Widowed / Divorced / Living Together | | | |
| Name | | Client ID No: | A |
| Date of Birth | | National Insurance No. | |
| Address | | | |
| Telephone Numbers | | Email address | |

SECTION 2 – PARTNER’S DETAILS

| | | | | |
|------------------------|-----|--|----|--|
| Do you have a partner? | Yes | | No | |
|------------------------|-----|--|----|--|

(If yes please give details below)

| |
|---|
| Title: Mr / Mrs / Miss / Ms / Other (please specify)_____ |
| Marital Status: Married / Single / Widowed / Divorced / Living Together |

| | | | |
|---------------|--|------------------------|--|
| Surname: | | Forenames | |
| Date of Birth | | National Insurance No. | |
| Address | | Telephone No. | |

SECTION 3 – REPRESENTATIVE DETAILS

Is the Service User dealing with his/her own financial affairs? Yes: ☐ No: ☐

(If No please give details below)

| | | | |
|--|--|---------------|--|
| Title: Mr / Mrs / Miss / Ms / Other (please specify) | | | |
| Forenames | | Surnames | |
| Address | | | |
| Postcode | | Telephone No | |
| | | Email address | |
| Relationship to Service User Relative, Friend, Power of Attorney, DWP Appointee or Deputyship held. | | | |
| Please provide copies of any Power of Attorney, Court Order appointing deputy or DWP correspondence confirming appointeeship. | | | |

SECTION 4 – IDENTITY Check – only for use by Care Finance Officer

List Evidence of Identity Documents Seen

Service User as per section
1 – if present

Representative as per
section 3 – if present

SECTION 5 – WHICH SERVICE IS THIS APPLICATION IN RESPECT OF

| | | | | |
|---|-----|--|----|--|
| Are you/will you be receiving a Personal Budget care service from the Local Authority? | Yes | | No | |
| If yes is your partner also receiving a Personal Budget care service from the Local Authority? | Yes | | No | |
| Are you in or going into a Residential or Nursing Home? | Yes | | No | |
| Are you in or moving to Extra Care Housing? | Yes | | No | |
| Name of person arranging service (i.e. – Social worker/care coordinator) | | | | |

Please be aware that it is essential that you answer all the questions as accurately as you can in order to ensure we can make a full and comprehensive calculation of your charge.

SECTION 6 – SERVICES RECEIVED

| | | | | |
|--|-----|--|----|--|
| Does the package of care you receive from the Local Authority include services received between the hours of 10.00pm & 7.00am? | Yes | | No | |
|--|-----|--|----|--|

SECTION 7 – DETAILS OF RESIDENTIAL/NURSING HOME TO WHICH YOU ARE MOVING

| | | | |
|-----------------------|----------|-------------------------|--------|
| Name of Home: | | | |
| Address of Home: | | | |
| | Postcode | | |
| Local Authority owned | YES/NO | Independent/ Voluntary. | YES/NO |

| | | | | | | | |
|---------------------------------------|---------|--|-----------------------|-----|--------------------------------|-----|--|
| Intended Date of Admission | / / | | Was this an emergency | Yes | | No | |
| Type of Admission: | Respite | | Rehab | | Permanent (incl. trial period) | | |
| If Respite or Rehab please give dates | | | From | / / | To | / / | |

SECTION 8 – INCOME DETAILS

Please give details of your income below. When partner's details are completed in this section the partner must also read and sign section 14 declaration.

| Income | Service User £ | Partner £ | Frequency (weekly, monthly, annually) |
|---|---------------------------|----------------------|--|
| State Retirement Pension | | | |
| Pension Guaranteed Credit | | | |
| Pension Savings Credit | | | |
| Private / Occupational Pension | | | |
| Private / Occupational Pension | | | |
| Statutory Maternity/Sick Pay | | | |
| Employment & Support Allowance | | | |
| Severe Disablement Allowance | | | |
| Universal Credit – Personal Allowance | | | |
| Universal Credit – Housing Allowance | | | |
| Attendance Allowance | | | |
| Disability Living Allowance – Care Personal Independence Payment | | | |
| Disability Living Allowance – Mobility | | | |

| | | | |
|--|-----|--|----|
| Personal Independence Payment | | | |
| Working Tax Credit | | | |
| Industrial Injury Benefit | | | |
| War Widows Pension | | | |
| War Disability Pension | | | |
| War Pension | | | |
| Maintenance Payments | | | |
| Earnings | | | |
| Other Income (<i>please specify</i>) | | | |
| Do you either receive Carer's Allowance or have the underlying entitlement to Carer's Allowance for caring for somebody? | Yes | | No |
| Does your partner receive Carer's Allowance or have the underlying entitlement to Carer's Allowance? | Yes | | No |

SECTION 9 – ACCOUNTS AND SAVINGS

Do you and your partner have any accounts or capital accounts?

| | | | |
|-----|--|----|--|
| Yes | | No | |
|-----|--|----|--|

Please list all current, post office, savings passbooks, ISAs, bonds, investments and any other accounts into which your income, capital or savings are paid.

*(In all cases, capital belonging to the service user should be included as well as 50% of any joint capital). **You must state in whose name the account/investment is held. If you have savings and capital in excess of £23,250.00 you will be self funding, please complete the form and sign section 17.***

Please provide copies of all bank statements, investments, capital etc.

| | |
|---|---|
| Do you have any savings in a Bank / Building Society | Yes / No (If yes give details below) – |
|---|---|

| Name of Bank/ Post Office/ Building Society etc. | Sort Code/Account Number | Balance as at date | Joint Account /Own name / Partner's name only |
|--|--------------------------|--------------------|---|
| | | | |
| | | | |

| Do you have any Stock & Shares/ National Savings Certificates/Premium Bonds or other investments | | Yes / No (If yes give details below) | |
|--|------------------|--------------------------------------|---|
| Nature of Investment | Number of Shares | Value | Joint Account /Own name / Partner's name only |
| | | | |
| | | | |

| Do you have any other savings, investments or capital? | | Yes / No (If yes give details below) | |
|--|--------|---|--|
| Nature of Savings | Amount | Joint Account /Own name / Partner's name only | |
| | | | |
| | | | |

Please continue on a separate sheet if necessary

SECTION 10 – EXPENDITURE

Please give details of your expenditure below: -

| Expenditure Details | Amount £ | Frequency (weekly, monthly, annually) |
|------------------------------------|-------------|---------------------------------------|
| Rent (<i>less rebate</i>) | | |
| Ground Rent | | |
| Council Tax (<i>less rebate</i>) | | |
| Mortgage Payments | | |

| | | |
|---|--|--|
| Board & Lodgings | | |
| Service Charge | | |
| Buildings Insurance | | |
| Water & Sewerage Rates | | |
| Electricity (<i>standing charge only</i>)* | | |
| Gas (<i>standing charge only</i>)* Non-Mains oil delivery charge only | | |
| Contents Insurance* | | |

**Applicable to Residential/Nursing Placements only*

SECTION 11 – DEPENDANT CHILDREN DETAILS

Do you have any dependant children living with you? Yes: ☐ No: ☐

(If yes please provide details below)

| | | | | | |
|--|--|------------------|--|------|--|
| Number of dependant children living with you | | No. Under 16 yrs | | Ages | |
| | | No. Over 16 yrs | | Ages | |
| Number of children with savings over £14,250 living with you | | | | | |

SECTION 12 – NON DEPENDANTS DETAILS

Do you have any non-dependants living with you? Yes: ☐ No: ☐

(If yes please provide details below)

| | |
|---|--|
| Total number of non-dependants in household | |
| Age of each person living with you | |
| Number of non-dependants on Income support/Pension Credit | |

| | |
|--|--|
| Number of non-dependants working | |
| Number of non-dependants not working | |
| Number of non-dependants that are full time students | |

For ALL service users please complete Section 13

SECTION 13- INFORMATION ABOUT YOUR HOME ADDRESS, PREVIOUS ADDRESS & OTHER PROPERTY

| | | | | | | | | | |
|--|--------------|-------------------|---------------|--------------------|-----------|----------|-------|--|--|
| Address of Normal Residence | | | | | | | | | |
| Type of occupancy | Solely Owned | | Jointly Owned | | Rented | | Other | | |
| If jointly owned or other please give details. | | | | | | | | | |
| Please provide a copy of all documents setting up these joint ownership arrangements including all and any relevant wills/ trust documents and or Land Registry documents. | | | | | | | | | |
| If owned give brief description of property. | | | | | | | | | |
| Detached | | Semi | | Terraced | | Bungalow | | | |
| Flat | | Number of Storeys | | Number of bedrooms | | | | | |
| Is there an outstanding mortgage/equity release on the property? | | | | | Yes | | No | | |
| If yes please confirm amount | | | | | £ | | | | |
| How long have you lived at this address? | | | | | | | | | |
| If less than 2 years please confirm your previous address | | | | | Postcode: | | | | |

| | | | | | | | | |
|--|--|-------------------|--|--------------------|-----|----------|----|--|
| Was the property owned or rented? | | | | | | | | |
| If owned is the property a former Council House? | | | | | Yes | | No | |
| Do you own any other land or property? | | | | | Yes | | No | |
| If yes please give details | | | | | | | | |
| Have you ever owned any other land or property? | | | | | Yes | | No | |
| If yes please give full details of all land or property previously owned including dates of sale. <i>(Please add additional sheets to back of this form if necessary)</i> | | | | | | | | |
| Detached | | Semi | | Terraced | | Bungalow | | |
| Flat | | Number of Storeys | | Number of bedrooms | | | | |
| Were any of your previous properties purchased under the right to buy? | | | | | Yes | | No | |
| If tenant, who is your landlord? | | | | | | | | |
| Does your landlord provide support? | | | | | Yes | | No | |
| If No, is this provided by another agency? | | | | | Yes | | No | |
| <p>Please provide a copy of your most recent mortgage statement.</p> <p>If you have anyone who pays you rent to live in your property, a copy of the rental or tenancy agreement you have with them.</p> | | | | | | | | |

SECTION 14 – OTHER DEBTS OR REGULAR EXPENDITURE

Other expenditure of this nature cannot be taken into account in relation to the calculation of your charge. However, it will help us to support you to manage the payment of your charge and existing commitments.

Personal loans Yes No Cost per month £

Store/ credit Card Yes No Balance outstanding £

Any other regular outgoings not listed previously in this form (eg; mobile phone contract etc)

SECTION 15 – WILLS & EXECUTORS

| | | | | |
|--|-----|--|----|--|
| Have you completed a will? | Yes | | No | |
| If Yes - who is your executor? | | | | |
| Where is the will held? | | | | |
| If you do not have a will, who is your nearest relative? | | | | |

SECTION 16 – DISABILITY RELATED EXPENDITURE

| | | | | |
|--|-----|--|----|--|
| Do you have specific additional costs relating to your disability? | Yes | | No | |
|--|-----|--|----|--|

Reasonable disability related expenditure will be assessed where any of the following disability benefits are in payment: in respect of Personal Budgets only.

The Severe Disability Premium included in payments of Income Related ESA, Pension Guarantee Credit or Attendance Allowance, Disability Living Allowance Care Component, Constant Attendance Allowance, Personal Independence Payment Daily Living Component and Severe Disablement Allowance

You will need to show evidence of this expenditure for it to be considered.

These do not include payments for services already provided for by this Authority.

| Item | Case Manager | Visiting Officer |
|---|--------------|------------------|
| <p>Dispersed Community Alarm</p> <p>Does not apply to sheltered housing tenants with fixed alarms or if funded through Supporting People. Actual cost paid unless included in Housing Benefit award. Appropriate confirmation of cost must be submitted to the Client Finance Team.</p> | | |
| <p>Privately Arranged Domestic Help</p> <p>Actual cost paid up to £14.00 per week for single person household, or cost proportionately divided by the number of other adult household members.</p> | | |
| <p>Additional Laundry Costs</p> <p>For example due to incontinence, personal hygiene problems, skin conditions. A maximum amount of £5.00 per week.</p> | | |
| <p>Special and additional wear and tear of clothing, footwear and bedding</p> <p>This only applies in exceptional circumstances where people have clothes especially made because of an established illness or disability. Reasonable amount based on the care plan and subject to the discretion of the Council.</p> | | |
| <p>Additional Gas and Electricity Costs</p> <p>Actual gas and electricity paid over one year minus the average amount annually Fuel amounts⁹²</p> <p>Flat/Terrace</p> <p>Single occupancy £1,311 Couple/shared occupancy £1,729</p> <p>Semi-detached</p> <p>Single occupancy £1,392.44 Couple/shared occupancy £1,835.18</p> <p>Detached</p> <p>Single occupancy £1,694.10 Couple/shared occupancy £2,233.18</p> | | |

⁹² Average annual amounts based on good practice guide issued by the National Association of Financial Assessment Officers

| | | |
|---|--|--|
| Maintenance or Repair of Equipment Where possible equipment should be sourced from B&NES Community Equipment Service via Sirona. A reasonable additional amount may be included, calculated as a weekly amount. At the discretion of Adult Client Finance and with conformation by Occupational health. | | |
|---|--|--|

SECTION 17 - REFUSING A CALCULATION OF CARE CHARGE AND / OR AGREEING TO PAY THE FULL CHARGE

If you do not agree to complete this financial calculation charge form and wish to pay the full charge for the service/s provided or have savings and capital (section 7) in excess of £23,250.00 please sign below. Please note that in signing this section it will mean that your package of care with the Local Authority may have to end and you may have to arrange your care privately. There may be clients in certain services this does not apply to, i.e. client paying full cost in an extra care establishment.

| | | |
|---|-------------------|--|
| I do not agree to a calculation of care charge and wish to pay the full cost. I understand this may mean I have to arrange my care privately | Signature: | |
| | Date: | |

In keeping with the EU's new General Data Protection Regulation (GDPR), we have recently updated our Privacy Policy to clarify how we protect your personal information.

Our updated policy provides more details on:

The information that we collect;

- How we use this information, why we store, and why we retain it; and
- How you can request that your information is updated, corrected, or deleted.

Details on the policy can be found here:

<http://www.bathnes.gov.uk/services/your-Council-and-democracy/data-protection-and-freedom-information/Council-privacy-notice-0>

Alternatively a paper copy can be made available upon request.

SECTION 18– DECLARATION

I understand that the information I have provided on this form will be used to determine the level of the charge I have to make for services arranged by Bath & North East Somerset Council. The exact figure will be notified to me in writing.

I understand that I should notify Bath & North East Somerset Council of any change in my circumstances as this may affect the level of my charge.

This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud.

I declare the information given above is correct to the best of my knowledge and belief and I have no objections to relevant enquiries being made.

Signature **Service User** **Date**.....

..... **Partner**

..... **Financial
Representative**

..... **Witness**

Signature **Care Finance Officer** **Date**.....

Please return the completed Calculation of Financial Charge Form to Client's Finance Team, Bath & North East Somerset Council, Lewis House, Manvers Street, Bath BA1 1JG Third Party Top-Up Financial Assessment

Name: _____

Signature: _____

Date: _____

Please return this form by email to client_finance@bathnes.gov.uk or by post to

Client Finance Team,
Lewis House,
Manvers Street,
Bath, BA1 1JG

In keeping with the EU's new General Data Protection Regulation (GDPR), we have recently updated our Privacy Policy to clarify how we protect your personal information. Our updated policy provides more details on:

The information that we collect;

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Alternatively a paper copy can be made available upon request.

20. Annex D

Sample Deferred Payment Agreement

DATE:

201*

DEFERRED PAYMENT AGREEMENT UNDER THE CARE ACT 2014

BETWEEN
BATH AND NORTH EAST SOMERSET COUNCIL

AND

For and on behalf of
XXXX

This Agreement is dated [insert date]

PARTIES

- (1) BATH AND NORTH EAST SOMERSET COUNCIL (the "Local Authority")
Guildhall, High Street, Bath, BA1 5AW
- (2) _____ of _____ acting in his capacity as
attorney for and on behalf of _____ ("you" or "your") of

- (3) [CO-OWNER NAME] of [CO-OWNER ADDRESS] ("Co-Owner")

BACKGROUND

- a) This deferred payment agreement has been entered into between the parties on the basis that the Local Authority [is required to do so under regulation 2] OR [permitted to do so under regulation 3] of the Care and Support (Deferred Payment) Regulations 2014.
- b) It has been identified that you require care in the form of residential accommodation in a care home or supported living accommodation.
- c) On the basis that your financial assessment has determined that you own capital in excess of the threshold limit, it has been identified that you are required to pay the cost of your care in full.
- d) You will be required to contribute your weekly income towards the costs of care, with the exception of your weekly disposable income allowance.
- e) You have a beneficial interest in the Property .The Local Authority has offered you a deferred payment agreement over the Property, allowing the costs of care to be deferred and accrue against property owned by you. The Local

Authority is also entitled to make a charge for Administrative Charges in putting place the arrangements for meeting your care needs and to apply interest to the accrued amounts. Such charges will be applied in accordance with the terms and conditions of this agreement.

1. Interpretation

1.1 In this Agreement, the following words have the following meanings:

| | |
|--------------------------------------|--|
| Accommodation | Means the details of the care home or the supported living accommodation identified in Schedule 1. |
| Administrative Charges | Means the costs that the Local Authority incurs and is permitted to charge you in relation to your deferred payment agreement in accordance with paragraph 10(3) of the Care and Support (Deferred Payment) Regulations 2014. These charges may include, but are not limited to, those charges identified in Schedule 2. |
| Agreement | Means the terms and conditions of this deferred payment agreement together with the Schedules. |
| Care Charges | Means the charges for the Accommodation, care and/or support that require to be paid since the Accommodation first commenced. The details of the current level of charges are set out in Schedule 1. |
| Contribution | Means the amount that you will be required to pay directly towards the Care Charges. |
| Debt | Means the balance from time to time of the amount of the Care Charges, Administrative Charges and Interest which has not yet been repaid and is accrued against the Property. |
| Equity Limit | <p>Means the maximum amount that the Local Authority will defer and can be accrued against the Property. Schedule 1 sets out the equity limit that is applicable to you at the time of entering into the agreement.</p> <p>This is calculated by taking into account 90% of the value of your interest in the Property (being the current market or surrender value at the relevant time) that the Local Authority has obtained as Security for the Care Charges together with any Administrative Charges and Interest which are to be treated as part of the Debt, less £14,250 and the amount of any encumbrance secured on it which ranks in priority to the Local Authority's Security. This amount can be amended from time to time by the Local Authority.</p> |
| Financial Assessment | Means the financial assessment carried out under section 17 of the Care Act 2014 |
| Financial Resources Threshold | Means the sum specified in regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014. |
| Income | Means your income as calculated in accordance with the Financial Assessment carried out under section 17 of the Care Act 2014. |

| | |
|--------------------------------|---|
| Interest | Means the interest that the Local Authority may charge on the amounts that it has deferred and that have accrued against the Property (including the Care Charges and the Administrative Charges). This rate will not exceed the Relevant Rate for the Relevant Period plus 0.15%. |
| Local Authority Contact | Means the representative of the Local Authority who you should notify of any change in circumstances or any other information required to be given under the Agreement. The name and contact details of this representative are included in Schedule 1. |
| Property | the property over which the Local Authority takes Security as identified in Schedule 1. |
| Relevant Period | Means the period starting on either 1 st January and ending on 30 th June in any year, or 1 st July and ending on 31 st December in any year. |
| Relevant Rate | Means the weighted average interest rate on conventional gilts specified for the financial year in which the Relevant Period starts in the most recent report published before the start of the Relevant Period by the Office of Budget Responsibility under section 4(3) of the Budget Responsibility and National Audit Act 2011. |
| Security | Means the security which the Local Authority takes in respect of the Property to protect repayment of the amount of charges that it has deferred together with the Administrative Charges and the Interest. This will take the form of a charge by way of legal mortgage which is capable of being registered as a legal charge in favour of the Local Authority in the land register or any other security which the Local Authority considers to be sufficient to secure payment. |

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made under it from time to time.

- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. How the payments will be made

- 2.1 The Local Authority agrees, subject to the Equity Limit, to defer payments up to a maximum of the Care Charges. This will be made by either:

2.1.1 deferring your obligation to pay Care Charges which are payable to the Local Authority; or

2.1.2 deferring the amounts payable by you in Care Charges by paying them to your care provider at the times when they become payable.

- 2.2 Where the Care Charges are payable to a care provider other than the Local Authority, the Local Authority will pay the amount of the Care Charges to the care provider. Where any sums are advanced to you in accordance with this Agreement, you must apply such sums to the payment of the Care Charges and not for any other purposes.

- 2.3 If you are notified of any change in the amount of the Care Charges or the frequency with which they must be paid, you must notify the Local Authority in writing as soon as you reasonably can and where possible, in advance of the change taking effect. If the Local Authority receives less than fourteen (14) days notice of a change it cannot guarantee that the requested change will be made in time to take effect on the required date.

- 2.4 If you decide at any time to pay the Care Charges or any part of them yourself you must give the Local Authority at least fourteen (14) days advance written notice before the payment is due of:

2.4.1 the amount that you are going to pay;

2.4.2 the number of times you will be making the payment (whether this will be a one-off payment, a set number of payments or if the payments will be made until further notice).

- 2.5 If you move from the Accommodation into another care home or other supported living accommodation, you should give us at least fourteen (14) days written notice of the change and that you wish the Local Authority to substitute the Care Charges with the charges applicable to the new accommodation. The Local Authority will do this if they meet the description of the Care Charges and if the Local Authority continues to be required to lend you the charges under the Care Act 2014. Any changes notified and agreed will take effect on the expiry of the fourteen (14) days notice. If the Local Authority do not believe that they continue to be required to defer the Care Charges as a result of the change in Accommodation, it will notify and discuss with you the impact of this as soon as possible and may not be required to defer any further amounts in accordance with clause 10.2.

- 2.6 The amount of the Care Charge takes into account your Income. If your Income exceeds the Income threshold, the Local Authority will require you to make the Contribution towards the charges due. The Care Charge which the Local Authority has agreed to defer will be reduced by the amount of the Contribution.
- 2.7 If your Income exceeds £144 per week, the Local Authority may require you to repay any amounts forming part of the Debt that should have been funded by your Contribution, by giving you at least 30 days' written notice from the date that it comes to the attention of the Local Authority that you are required or should previously have been required to make a Contribution during the term of this Agreement.
- 2.8 If you notify the Local Authority (or the Local Authority is otherwise notified) that your Income will or is due to exceed £144 per week, the Local Authority will give you at least thirty (30) days written notice from the date that it comes to the Local Authority's attention, that it will reduce the amount of payment that it will defer and the amount of the Care Charges will be amended accordingly to take into account the Contribution you will be required to make.
- 2.9 The Local Authority will not defer any further amount under this Agreement (even if the Equity Limit has not been reached) if at any time:
- 2.9.1 you are no longer receiving care and support in the Accommodation or other applicable care home or supported living accommodation;
 - 2.9.2 your needs should no longer be met by the provision of care and support in the Accommodation, or other applicable care home or supported living accommodation;
 - 2.9.3 if the Equity Limit has been reached;
 - 2.9.4 in accordance with clause 10.2 below;
 - 2.9.5 if you are in breach of your obligations under clause 10.3 below;
 - 2.9.6 if the Property can no longer be insured against all usual risks, save where at the Local Authority's discretion it believes that there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the amount that it has lent you and any future loans that are to be provided;
 - 2.9.7 If the Local Authority reasonably finds that your financial resources do not exceed the Financial Assessment Threshold;
 - 2.9.8 If any valuation report (obtained in accordance with clause 9) concludes that the value of your interest in the Property does not equate to or exceed the Debt until, subject to the Equity Limit, such time as the value of the property has increased to the Local Authority's satisfaction;

- 2.10 The Local Authority will give you at least 30 days' written notice of the date on which it believes that the Equity Limit will be reached unless it is not reasonably practicable to do so because, for example, the Equity Limit is reached by reason of a fall in the value of the Property.

Interest

- 2.11 Interest will be charged on the Debt. This will be a compound interest rate applied daily from the date the Accommodation commenced. The interest rate for the initial Relevant Period is set out in Schedule 2 of this Agreement.
- 2.12 If you decide that you wish to pay the Interest separately rather than adding the Interest to the Debt, you should give the Local Authority at least fourteen (14) days written notice. If you do this you may return to paying interest at any time by giving the Local Authority at least fourteen (14) days' written notice that you wish to do so. Once this notice has taken effect the Local Authority will invoice you separately for the interest which has accrued on an annual basis. If you do not then reimburse the invoiced amount within 28 days after such notice is given, the amount of those costs will be added to the Debt and Interest will be charged from that date.
- 2.13 Interest will be added to the Debt each month, on the date when an amount is lent to you for Care Charges, unless the Interest is paid before that date.
- 2.14 The Local Authority may, by giving you at least fourteen (14) days written notice, vary the Interest by an amount that it chooses, to reflect, in a proportionate and reasonable way any change in the cost of funding the Loan as long as the amount does not exceed the Relevant Rate.

3. Costs and Interest on Costs

- 3.1 The Local Authority will charge you the Administrative Charges. Unless otherwise agreed at the commencement of this Agreement, the Administrative Charges will be added to the Debt and Interest will be charged on the amount of the Administrative Charges. If you wish to pay the Administrative Charges separately (and not include these in the amount of the Debt) you should give the Local Authority fourteen (14) days written notice. Once this notice has taken effect the Local Authority will invoice you separately for such Administrative Charges as they become due. If you do not then reimburse the invoiced amount within 28 days after such notice is given, the amount of those costs will be added to the Debt and Interest will be charged from that date.
- 3.2 A copy of the Local Authority's current tariff of charges will be provided to you with this Agreement. The Local Authority will give you notice of any changes to the tariff of charges by sending you a copy of the tariff when it is changed, and you may obtain a copy of the current tariff of charges on request at any time.

4. Repayment

- 4.1 The Debt is to be repaid to the Local Authority on the earliest of the following dates:

- 4.1.1 the date of any sale or other disposal of the Property;
- 4.1.2 90 days after your date of death.
- 4.2 You will be required to immediately repay parts of the Debt together with Interest, if the Local Authority lends you sums on the mistaken assumption that it is required to make such payments (and it is not actually required to permit you to defer those sums) and you should reasonably realise that you were not entitled to the benefit of these sums (for example where you no longer live in the Accommodation).
- 4.3 If the Local Authority lends or defers sums on the mistaken assumption that it is required to make such payments (and it is not actually required to defer those sums) and it is not reasonable for the Local Authority to expect you to realise that you were not entitled to the benefit of these sums, then the Local Authority will give you three months notice to repay part of any part of the Debt (together with Interest).

5. Security

- 5.1 The Local Authority's rights to repayment of the Debt will be secured by way of the Security (also called a legal charge) over the Property.
- 5.2 You agree to grant the Security in the form set out at Schedule 3 to this agreement and will obtain all necessary consents to grant the Security. For example, if the Property is already secured to another party, or somebody already has a legal charge that ranks in priority to the Security that the Local Authority requires, you may need that other party's consent to grant the Security to the Local Authority. The Local Authority will not be able to lend any amounts until it has received genuine and informed consent in writing by any party who has an interest in the Property.

6. Possession and use of the Property

- 6.1 If you intend to let the Property or allow the Property to be occupied by any person you must:
 - 6.1.1 first obtain the Local Authority's prior written consent; and
 - 6.1.2 pay for and maintain adequate insurance including where appropriate landlord's insurance in relation to the Property on terms satisfactory to the Local Authority.

The Local Authority will not unreasonably withhold or delay its consent provided that the Property will be occupied on the basis of an assured shorthold tenancy which enables an order for possession to be obtained on one month's written notice, after the expiry of an initial term of no more than 6 months.

7. Insurance and maintenance of the Property

- 7.1 You agree to adequately insure the Property against all usual risks and provide evidence of such insurance at the reasonable request of the Local Authority.
- 7.2 If satisfactory evidence is not provided to the Local Authority that the Property is adequately insured the Local Authority may, where reasonably required, itself insure the Property under an appropriate policy of insurance. The cost of this insurance will be included in the Administrative Charges to be charged to you.
- 7.3 You shall apply all moneys received or receivable under any insurance in respect of the Property towards replacing, restoring or reinstating the Property or towards compensating the applicable third party as appropriate. To the extent that the relevant insurance policy does not restrict the proceeds of insurance being used to prepay the Debt, the proceeds of insurance shall be used, at the option of the Local Authority, to prepay the Debt.
- 7.4 The Local Authority, or any appropriately qualified person acting on behalf of the Local Authority will give you at least fourteen (14) days notice that it is going to inspect the Property for the purposes of ascertaining whether the Property is being maintained in reasonable condition and/or whether there are works of maintenance and/or repair which should be undertaken to the Property in order to preserve or restore its value at or to a value which is adequate Security for the Debt, together with a reasonable amount by which it is anticipated that the Debt will increase in the foreseeable future. The Local Authority will not carry out this inspection more than once a year.
- 7.5 If, following an inspection under clause 8.4, the Local Authority reasonably considers that works need to be undertaken, the Local Authority will give notice (of not more than 56 days and not less than 28 days or such other notice period taking into account the urgency of such works) to you of this requirement requesting that either you carry out such works to the reasonable satisfaction of the Local Authority or stating that the Local Authority will undertake such works and recover the reasonable costs of such works as Administrative Charges.

8. Valuations

- 8.1 If at any time the Local Authority has reasonable grounds for concluding that the Debt exceeds the value of your interest in the Property or exceeds the Equity Limit, it may take reasonable steps to ascertain the value of the property and in particular instruct a suitably qualified valuer to inspect the Property and to provide a report to the Local Authority on the market value of the Property.
- 8.2 The cost of obtaining this valuation report or costs incurred in otherwise ascertaining the value of the Property may be included in the Administrative Charges.

9. Keeping the Local Authority informed and undertakings that you give to the Local Authority

- 9.1 You must inform the Local Authority as soon as reasonably practicable if any of the following happens:

- 9.1.1 your income exceeds, or is expected to exceed, £144 in any week or, where your income has already exceeded £144 in any week;
 - 9.1.2 there is any change to the amount or frequency of your Care Charges;
 - 9.1.3 you have not paid any Care Charge in full when it has become due (other than any which is payable to the Local Authority or which the Local Authority is to pay on your behalf under this Agreement);
 - 9.1.4 you cease to live in a care home or supported living accommodation;
 - 9.1.5 there is a change to your needs for care and support the effect of which is that you may no longer require your needs to be met by the provision of the Accommodation;
 - 9.1.6 a decision is taken to sell, encumber or otherwise dispose of the Property or any part of it.
- 9.2 If any of the events listed in clause 10.1.3 to 10.1.6 occur the Local Authority may not be obliged to lend you any more money.
- 9.3 You undertake to inform the Local Authority of other relevant information that may reasonably impact on this Agreement and to comply with the following obligations:
- 9.3.1 obtain any waiver, consent, authorisation or other permission necessary to comply with this Agreement and to enable the Local Authority to take out the Security over the Property;
 - 9.3.2 obtain consent and agreement from any occupiers of the Property that any interest they have in the Property whatsoever will rank behind the interests of the Local Authority including, for the avoidance of doubt, any Security or legal charge granted in favour of the Local Authority;
 - 9.3.3 not to create or permit to subsist any security over the Property without the prior consent of the Local Authority (such consent to be subject to the security being reasonable to the Local Authority but not to be otherwise unreasonably withheld or delayed);
 - 9.3.4 not to sell, transfer or otherwise dispose of the Property without the prior consent of the local authority;
 - 9.3.5 not to increase any existing indebtedness which is secured against the Property nor to borrow any more money secured against your Property without the prior consent of the Local Authority (such consent not to be unreasonably withheld or delayed);
 - 9.3.6 to notify the Local Authority of any changes to your financial position or any income that you receive;

- 9.3.7 not to change or alter the Property without the Local Authority's consent (not to be unreasonably withheld or delayed).

10. Ending this Agreement

- 10.1 You may bring the Agreement to an end at any time by giving reasonable written notice to the Local Authority and paying the whole of the Debt.
- 10.2 If you do not bring the Agreement to an end early in accordance with term 11.1, the Agreement will come to an end when the Debt is paid in accordance with clause 4 above.
- 10.3 The Local Authority will not lend or defer any further sums under the Agreement if you fail to comply with your obligations and undertakings in this Agreement or in relation to the Security. For example, non-payment on any due amount pursuant to this Agreement or a legal charge.
- 10.4 If a failure to comply occurs, as described in term 11.3, the Local Authority may:
- 10.4.1 cancel any commitment to lend whereupon it shall immediately be cancelled; and/or
 - 10.4.2 declare the Security enforceable.

11. Ending this Agreement

- 11.1 You may bring the Agreement to an end at any time by giving reasonable written notice to the Local Authority and paying the whole of the Debt.
- 11.2 If you do not bring the Agreement to an end early in accordance with term 11.1, the Agreement will come to an end when the Debt is paid in accordance with clause 4 above.
- 11.3 The Local Authority will not lend or defer any further sums under the Agreement if you fail to comply with your obligations and undertakings in this Agreement or in relation to the Security. For example, non-payment on any due amount pursuant to this Agreement or a legal charge.
- 11.4 If a failure to comply occurs, as described in term 11.3, the Local Authority may:
- 11.4.1 cancel any commitment to lend whereupon it shall immediately be cancelled; and/or

12. Statements

- 12.1 The Local Authority will provide you with a written statement:
- 12.1.1 at the end of the period of six months beginning with the date of this Agreement;
 - 12.1.2 every six months after the date of the first statement; and

12.1.3 within 28 days of a request to the Local Authority for such a statement made by you or on your behalf.

13. This statement will inform you of the amount which you would have to pay to the Local Authority if you were to bring the Agreement to an end on the date on which the statement is sent or such later date as has been requested by you, and the amount of Interest and Administrative Charges which have accrued since the Agreement was made.

14. How notices or statements are to be given

Any notice or statement which the Local Authority gives to you in accordance with this Agreement will be sent by first class prepaid post to you at the Accommodation or by such other method by or to such other person and at such address as has been agreed in writing between you and the Local Authority from time to time.

- 14.1 Any notice which you give to the Local Authority under this Agreement is to be given in writing to the Local Authority Contact.
- 14.2 Any notice or statement which is sent by first class prepaid post is to be treated as having been served on the second day after it is posted, excluding Sundays and public holidays. Any notice or statement which is sent by fax or email to the Local Authority Contract or such other contact details as provided to either party, is to be treated as having been served at 9am on the business day after the date that it was sent, save where the party receives an error or failure message.

15. Assignment and transfer

- 15.1 The Local Authority may:

15.1.1 assign any or its rights under this Agreement or the Security; or

15.1.2 transfer all of its rights or obligations by novation,

to a bank, financial institution or other institution.

16. Severance

- 16.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 16.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal,

valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. Applicable law

17.1 The interpretation, validity and performance of this Agreement shall be governed by the law of England and Wales.

18. Variation

18.1 Any variation to this Agreement must be in writing and signed both by you (or your appointed Attorney) and on behalf of the Local Authority.

19. Co-owners

19.1 The Co-Owner consents to you entering into the terms of this Agreement. The Co-Owner agrees that he/she will join as a party to the creation of the Security which will be created under the terms of this agreement and will do all things necessary and sign all forms of consent appropriate to securing the registration of the Security in favour of the Local Authority under the terms of the agreement.

19.2 The Co-Owner acknowledges and agrees that it has been advised by the Local Authority to seek independent legal and financial advice before signing this Agreement. In this context “independent advice” means advice from an advisor who is neither related to or acting on behalf of you.

Your signature

Please read this Agreement carefully, including all the terms set out above and the information set out in the Schedules at the end of the Agreement. The Local Authority advises you to seek independent legal and financial advice before entering into this Agreement. Only sign below if you understand and accept the terms and information included.

Missing payments

If you do not make payment when it falls due, legal proceedings may be issued against you for a judgment for the amount you owe and/or for possession of the Property. It could also make it more difficult or expensive for you to obtain credit in the future.

Complaints

If you or any guarantor is dissatisfied with any action or omission on the part of the Local Authority under or in connection with this Agreement, in the first instance please write to your Local Authority Contact. If your complaint is not resolved by the Local Authority to your satisfaction, you may have a right of appeal under the complaints procedure set out on the Local Authority's website.

THE PROPERTY SECURING THIS BORROWING MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON THE LOAN OR COMPLY WITH THE OBLIGATIONS OF THIS AGREEMENT

Signed by

_____ (as attorney for)

in the presence of

Date of signature:

Witnessed by:

Witness signature

witness name

address

occupation

Signed for and on behalf of the Local Authority:

Name of person signing:

Position of person signing:

Date of signature on behalf of the local authority :

Witnessed by:

SCHEDULE 1

KEY CONTRACT INFORMATION

| | |
|-------------------------------|--|
| Accommodation | |
| Administrative Charges | An estimate of these costs and/or a copy of the Administrative Charges of the Local Authority that are applicable at the time of entering into the Agreement are included in Schedule 2. |
| Care Charges | <p>Weekly Care Charge: £</p> <p>These charges are those Care Charges which are to be provided by the Local Authority under this Agreement and may be amended from time to time. The total payable for your care and support while the borrower is living in the Accommodation may be more than the Care Charges shown above. The Care Charges comprise of those charges which the Local Authority consider to be necessary to meet your needs while you are living in the Accommodation.</p> |
| Equity Limit | <p>At the time of entering into the agreement, the Equity Limit applicable to you is:</p> <p>£</p> <p>This amount can be amended from time to time by the Local Authority in the event of changes in the value of the Property or where other lending or changes in circumstances occur.</p> <p>This amount has been calculated by taking into account 90% of the value of your interest in the Property (being the current market or surrender value at the relevant time) that the Local Authority has obtained as Security for the Care Charges together with any Administrative Charges and Interest which are to be treated as part of the Debt, less £14,250 and the amount of any encumbrance secured on it which ranks in priority to the Local Authority's Security.</p> <p>If the amount being lent to you would exceed the Equity Limit as a result of the Local Authority lending an amount that it would otherwise be due to lend for Care Charges, the Local Authority will not lend that amount. This means, for example, that if 90% of the value of your interest in the Property, less the amount of any indebtedness secured over the Property by a charge with priority over the Local Authority's security and less £14,250, is £70,000, and you have already been lent a total of £70,000, you will not be lent any more unless or until the value of the Property increases. However, where, due to a fall in the value of the Property, the amount of the Debt comes to exceed the</p> |

| | |
|--------------------------------|---|
| | Lending Limit on a date which falls after the date on which the Local Authority last lent an amount in respect of Care Charges and on or before the date on which it is next due to lend an amount in respect of Care Charges, the Local Authority will lend on that next occasion even though lending on that occasion will result in the Debt further exceeding the Equity Limit. After that, the Local Authority will not lend any further amount unless or until the value of the Property increases. |
| Interest | You have agreed that any Interest will be added to the amount of the Debt |
| Local Authority Contact | |
| Property | |

SCHEDULE 2 INTEREST RATES AND ADMINISTRATIVE CHARGES

1. Interest rate – amended every six months Compound interest rate (applied daily) Period applicable

2. Administration charges

Estimated Costs

Set up fees

Land search fees: £10.00

Legal cost to prepare agreement and register charge: £350.00

Land registration fee: Cost charged by Land Registry dependent on value of property

Professional valuation (where required) Cost incurred by Council (notified in advance)

Review fees (every 6 months)

Cost to review debt value and compliance
Preparation of interim statement £105.00

Termination fees

Legal cost to agree termination of agreement, repayment and removal of charge £350.00

SCHEDULE 3

Security

Charge – CH1 Land Registry Form

This is a standard Land Registry document, you (or your representative) will be required to sign the form and have your signature witnessed by anyone aged over 18 not related to you and not residing with you.

The witness will need to provide their name, address, occupation and signature.

If you (or your representative) wish to see the CH1 form please go to:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/330008/CH1.pdf

Identity form – ID1

The Land Registry require all parties wishing to make a change to the property register (including registering a charge) to either be represented by a Solicitor or Conveyancer or provide confirmation of their identity by completing an ID1 form.

You (or your representative) will need to complete part A and then ask a Solicitor or Conveyancer to complete Part B. You (or your representative) will need to provide a passport photograph and the party completing Part B will need to sign the back of the photograph.

The Solicitor or Conveyancer completing the ID1 for you (or your representative) will charge for this service.

If you (or your representative) wish to see the ID1 form, please go to:

https://assets.publishing.service.gov.uk/government/.../ID1_2018-05-25_doc

You (or your representative) can also obtain guidance on completing the ID1 form:

<https://www.gov.uk/guidance/completing-forms-id1-and-id>

Charges for Deferred Payment Agreements and Interest Rates

Fees for Deferred Payments Agreements (DPA's)

| | |
|---|--------------------------------|
| Legal Costs for a DPA – secured by a first Legal Charge against a freehold property in sole ownership of applicant, with no loans secured and no additional legal complications | £350.00 (+ VAT if applicable*) |
|---|--------------------------------|

| | |
|---|--|
| Variable legal costs to cover the cost of additional work (if required) to secure a | £100.00 per hour (+ VAT if applicable *) |
|---|--|

charge against a property or obtain a Solicitors Undertaking. If this applies the Council will provide an estimate in advance

Land Registry fees – registration service fees please refer to Land Registry Scale 2 fees which can be found on the Land Registry Website
www.gov.uk/guidance/land-registry-registration-services-fees

| | |
|---|---------------------------------------|
| Formal valuation | At cost (+VAT if applicable) |
| Review of debt and interim statement | £105.00 annually (+VAT if applicable) |
| Legal costs on termination of the agreement and removal of the Charge | £350.00 (+VAT if applicable) |
| Costs of any specialist legal and/or financial advice obtained by the Council (if required) – the Council will provide an estimate in advance | At cost (+VAT if applicable) |

- Value Added Tax (VAT) – the legal and administrative costs quoted above are exclusive of VAT. VAT will be charged if applicable. DPA's which meet the national mandatory DPA requirements to be secured by a first legal charge are not currently subject to VAT.
- VAT does not currently apply to Land Registry statutory fees. Land Registry fees are set and reviewed by the Land Registry and subject to change.
- Review of debt and Preparation of interim statement charge will be increased annually in April in line with CPIH.

Annual interest rates for DPA's

| | |
|---------------------------------|---------------------------------|
| 1 January 2018 – 30 June 2018: | 1.45% yearly rate charged daily |
| 1 July 2018 – 31 December 2018: | 1.85% yearly rate charged daily |
| 1 January 2019 – 30 June 2019: | 1.65% yearly rate charged daily |

Please note:

- The Council charges the maximum interest rate as defined in the Care and Support Regulations⁹³
- Interest is charged daily on the deferred payment agreement (including any administration costs) and is compound interest
- Interest charges are added to the deferred Payment debt.

⁹³ Clause 9 of the Care and Support (Deferred Payments) Regulations 2014.

Sample Solicitors Undertaking

We, Messrs

Solicitors of

hereby undertake to Bath and North East Somerset Council ("the Council") as follows:-

1. That we are currently instructed in the sale of [name and address of property] ("the Property") being the property of [name of resident][and others].
2. We will pay to the Council out of [name of resident's share of] the proceeds of sale of the Property the amount statutorily recoverable by the Council in respect of care and respite accommodation charges paid by the Council in respect of [name of resident].
3. If our instructions to sell the Property are withdrawn for any reason or we are instructed to significantly (i.e. 10% or more) change price, we will immediately advise the Business Services, Client Finance Team, Lewis House, Manvers Street, Bath BA1 1JG

The sum to be paid in accordance with this undertaking shall not exceed [name of resident's share of] the net proceeds of sale of the Property, after the deduction of all reasonable expenses connected with the sale.

Signature :

Messrs

Solicitors

Date :

21. Annex E

Privacy Notice

To view the Adult Social Care Client Finance privacy Notice please go to:
<http://www.bathnes.gov.uk/services/your-Council-and-democracy/data-protection-and-freedom-information/Council-privacy-notice-0>

If you would like a hard copy of the privacy notice please contact Client Finance Team on 01225 396487 or by email client_finance@bathnes.gov.uk or write to

Client Finance Team,
Lewis House,
Manvers Street,
Bath
BA1 1JG

Bath and North East Somerset Council can also provide you with guides on the following:

- For people moving into residential accommodation
- Top-up fees
- Direct payments

22. Glossary of terms:

Assessed weekly charge: This is the amount of money you will be expected to pay towards your costs of care and is based on your financial assessment.

Commissioned package of care: A commissioned service means care, support or supervision that has been arranged and paid for on a client's behalf by a public authority such as: In the case of personal care, a local authority adult social care department.

CPIH - Consumer Prices Index including owner occupiers' housing costs

Direct payment: Direct payments are payments for people who have been assessed as needing help from social services, and who would like to arrange and pay for their own care and support services instead of receiving them directly from the Council.

Personal budget: A Personal Budget is an agreed amount of money that is allocated to you personally by your local Council (and other funding streams) following an assessment of your care and support needs. A personal budget is a statement of the amount of money needed to meet your eligible social care needs.