



Department  
of Health

# The Relative's Property Disregard

Guidance to local authorities on how to apply the relative's property disregard in the light of the judgment in the *Walford v Worcestershire County Council* judicial review

**Title: The Relative's Property Disregard: Guidance to local authorities on how to apply the relative's property disregard in the light of the judgment in the Walford v Worcestershire County Council judicial review**

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**The Department of Health**

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# Background

1. The Walford v Worcestershire judicial review considered the scope and application of the property disregard under Paragraph 2(b)(ii) of Schedule 4 to the National Assistance (Assessment of Resources) Regulations 1992. This requires a local authority to disregard the value of any premises owned by a local authority supported resident where the property is occupied in whole or in part as their home by a family member or relative who is aged 60 or over or is incapacitated.
2. The case was heard on 22<sup>nd</sup> and 23<sup>rd</sup> January 2014. The Secretary of State for Health was an interested party in the case. The judgment was published on 10<sup>th</sup> February. The judgment clarified the legal position on a number of key points and Ministers are content that this reflects the underlying policy intention of the existing regulations and guidance.
  - a. Paragraph 2(b)(ii) should be read as only applying to the property occupied by the resident's family member or relative (a "relative") as their main or only home;
  - b. The disregard applies if a property is occupied by a relative but this does not mean the relative must at all times be physically present in order to be considered to be occupying the property; and
  - c. The decision as to whether a property is disregarded because it is occupied by a relative is not fixed at a particular date and is open to review to take account of changing circumstances.
3. This guidance does not seek to comment on the particulars of the Walford v Worcestershire County Council case but on the broader matters related to the application of the regulations in the light of the judgment. This guidance aims to help local authorities interpret and apply the regulations in the light of the judgment.
4. Local authorities should be aware that Worcestershire County Council is seeking leave to appeal against the judgment. Should there be any change to the legal position the Department will publish further guidance if required before the new legal framework under the Care Act comes into force in April 2015.

## Conditions of the disregard

5. In many cases the answer as to whether a property is subject to a disregard because it is occupied by a relative as their main or only home will be obvious. Where it is not, the local

authority will need to undertake a factual inquiry weighing all relevant factors and taking a decision, reviewable on normal public law principles. As part of such enquiries an authority may make reasonable requests for information and evidence in order for a decision to be reached. Enquiries may be made from the resident or relative and may include requests for authorisation for the authority to obtain information from a third party directly.

6. Authorities may wish to include relevant questions and authorisations on their financial assessment forms, which could include a separate form for a resident to apply for a property disregard.
7. The property disregard under Paragraph 2(b)(ii) is mandatory and a local authority must disregard a property where the conditions are met. In order for a property to be disregarded it must be occupied as their main or only home by a qualifying relative. There are, therefore, two conditions, (1) it must be occupied by the relative and (2) it must be their main or only home.
  - a. As to (1) – take somebody who is an artist and uses a room at their parents’ house as a studio, living elsewhere, never sleeping in the premises. That person would be occupying premises but not as their home – the disregard would not apply.
  - b. As to (2) – take somebody who leaves the parental home to travel the world for several years. They never put down permanent roots and live nomadically. The premises might be their home but they are not in occupation – the disregard would not apply.
8. An emotional attachment to a property is not, therefore, sufficient on its own; there must be occupation and the property must be the person’s main or only home. In determining whether a property is a person’s main or only home, the degree of occupation is important.
9. Occupation and physical presence are not the same thing. Physical presence is not sufficient by itself as indicated above. Where a person is temporarily absent (i.e. not present), they may still have occupation of a kind. For example:
  - a. A person might have to work away from home for a period as part of their contract. In these circumstances the person might not regard the place where they live to work as their home and would expect to return to live in the property at the end of the contract. A person working on detached duty might, for example, spend most of their time living away from home but return regularly, at weekends or holiday periods.
  - b. A resident’s relative is serving a prison term. It would not be reasonable to regard the prison as the relative’s home. The family home might still be regarded as the relative’s home if it was their intention to live in it at the end of their sentence. However, the length of the sentence and the likelihood of the person returning to the property are relevant considerations to be taken into account.

10. In considering whether the conditions are met the degree of occupation may be highly relevant to determining which property is the person's main or only home, although again there may be circumstances where quality is more important than quantity of occupation.
11. Factors to be considered may include:
- a. Is the relative occupying another property at the time of the assessment?
  - b. If so, which of those two (or more) properties is to be regarded as the main property having regard to all the relevant factors including, in particular, the length of time that has been and currently is being spent at each property, if they have a family where they live and the degree of emotional attachment as described above?
  - c. Would failure to apply the disregard result in the relative becoming homeless?
12. This list is not exhaustive and other factors may be relevant. It is for the authority to make a decision based on the particular facts of the case.
13. Each time it financially assesses what a resident can afford to pay the local authority must make a decision as to whether a resident's property is subject to a disregard. It will make this decision based on the information that has been presented to it. Therefore, the resident or their representatives should try to ensure that the local authority is provided with all the relevant information to ensure the correct decisions, including regarding the treatment of property, are made.

### When did the person start to occupy the property?

14. In order for the disregard to apply, there is no requirement for the relative to have occupied the property from before the resident went into the care home.
15. A property **must** be disregarded where the relative meets the qualifying conditions (i.e. is aged 60 or over or is incapacitated) and has occupied the property as their main or only home since before the resident entered the care home.
16. A property may still meet the conditions for the mandatory disregard when a qualifying relative moves into the property after the resident enters the care home. Where this happens the local authority will need to consider all the relevant factors in deciding whether the property must be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness. Local authorities need to make sure that a property is actually subject to a mandatory disregard to ensure that residents are not needlessly maintained at public expense. However, if, based on the facts, the local authority determines that the property is occupied by the relative as their main or only home it **must** disregard the property.

# Review

17. Local authorities should regularly review the resources of people it supports in a care home to take account of changes to their circumstances. This is to ensure that residents do not pay more than they can afford but also to ensure residents who can afford to pay more – due to an improvement in their financial position – are not receiving more public support than they are entitled to receive, thereby reducing local authorities' ability to provide care and support.
18. Reviews of a person's capital assets must include property because, like anything else, the value of this and whether it is disregarded are subject to change. A property that is taken into account may become subject to a disregard, the most likely reason for this is that a family member living in the property reaches the age of 60. On the other hand a property that is disregarded may change to being taken into account, for example because the partner of the resident dies.

## Deferred Payments Agreements

19. Provided the qualifying conditions for a relative's property disregard are met the disregard will apply from the relevant date even if there is a pre-existing Deferred Payments Agreement (DPA). Deferred payment agreements are a way of helping people to meet the costs of their care more flexibly and do not affect how much or whether someone is charged.
20. Where a property with a DPA secured against it becomes subject to a disregard, the local authority will no longer be *required* to defer further charges. This is because where a home is disregarded, no contribution to costs is required from the value of the property and so there should be no risk of someone having to sell the home to meet the cost of their care. A local authority could, however, use its discretion to defer further charges even when a property is disregarded if it considers such a request to be reasonable and financially sustainable. Whilst the local authority will be under no obligation to defer further charges, it will not be able to terminate the agreement. Deferred payment agreements can only be terminated by the sale of the home, a person choosing to repay the deferred amount, or on death.

# Changes to the regulations from April 2015

21. Regulations and guidance under the Care Act 2014 will replace the existing charging framework from April 2015. The Draft regulations and guidance will clarify the position. These are being consulted on. However, the overall policy intention of the new framework is as follows.
22. Where an adult goes into a care home any property they own will be taken into account in the financial assessment for charging for care and support unless it is subject to a disregard. Subject to certain conditions, from April 2015 a property must be disregarded where it is occupied as their main or only home by one of the following:
- a. the adult's partner, civil partner or former partner (except where the adult is estranged or divorced from the partner,
  - b. a lone parent who is the adult's estranged or divorced partner with a child that is under 18,
  - c. a relative or family member of the adult who:
    - i. is aged 60 or over, or
    - ii. is a child of the adult aged under 18, or
    - iii. is incapacitated.
23. Amongst the conditions for the disregard will be that the qualifying relative must "occupy" the property, it must be their "main or only home" and they must have been in occupation of the property since before the date on which the adult went into the care home. Statutory guidance will clarify the meaning of terms such as "occupy", "main or only home" and "incapacitated".
24. However, in addition to the mandatory disregards, local authorities will have discretionary powers to disregard a property. For example, because the purpose of the property disregard is to prevent vulnerable people from becoming homeless it may be appropriate for a property to be disregarded when a qualifying relative moves into the property and occupies it as their main or only home after the date on which the adult enters the care home. Statutory guidance will set out the factors local authorities should consider when deciding whether to exercise this discretion.

