



Department  
of Health &  
Social Care

# **Implementing the cap on care costs: revised draft operational guidance**

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## **Note:**

Following an [announcement by the Chancellor of the Exchequer on 29 July 2024](#), the planned adult social care charging reforms, which were inherited from the previous government, will not be taken forward in October 2025.

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# 1. Cap on care costs

This chapter covers:

- an overview of the cap on care costs and its operation
- how people start metering towards the cap
- costs that count and do not count towards the cap
- how a person's financial contribution should be calculated and set out
- what happens when a person moves to another local authority
- approaching and reaching the cap
- self-funders asking the local authority to meet their needs

## Introduction

- 1.1 The cap on care costs ('the cap') sets the basis of a new partnership between the person and the state. Its purpose is to protect people from unpredictable care costs by limiting the costs a person in England will need to face to meet their eligible care and support needs in their lifetime (where eligible needs are those defined as such under the Care Act 2014 ('the act')). As a result, the cap makes it clear the costs that a person will need to meet themselves throughout their care journey.
- 1.2 From October 2023 the cap will be set at £86,000. Thereafter, an annual review will assess and determine whether this amount should be adjusted to take account of inflation. Anyone assessed by a local authority as having eligible care and support needs, whether a new entrant or an existing social care user, can begin to progress towards the cap from October 2023 onwards. The cap is the maximum amount anyone who starts receiving care after this date will have to pay to meet their eligible care and support needs. This is based on what the local authority charges the person to meet their eligible care and support needs, or in the case of self-funders who arrange their care themselves, what the cost would be to the local authority of meeting those needs. Details on how people's progress towards the cap should be reflected if and when the level of the cap is adjusted are in paragraphs 1.78 – 1.80 of this chapter.

- 1.3 Everyone in residential care will remain responsible for meeting their daily living costs, such as rent, food and utility bills. The component of a person's care package attributable to daily living costs, set at a national, notional amount in Regulations, will not count towards the cap on care costs. For further detail, see paragraphs 1.18 – 1.26 of this chapter.
- 1.4 The person, or a third party on their behalf, may choose, in certain circumstances, to make additional payments for a preferred accommodation that meets the person's needs (known as 'top-ups'). Top-up payments will not count towards the cap on care costs. For further detail, see paragraphs 1.27 and 1.28 of this chapter, and Annex A 'Choice of accommodation and additional payments' in the CASS guidance.
- 1.5 The cap aims to provide people with clarity about the costs they will face for their care and the financial support they can expect from the state. The certainty and peace of mind that the cap offers will enable people to plan more effectively, and to provide and prepare for their future care needs.

## Overview

- 1.6 Several different elements support the operation of the cap. For each person with eligible care and support needs, the local authority must provide a statement setting out what the cost is, or would be, to the local authority of meeting those eligible needs.
- 1.7 The person will either have their needs met by the local authority or they will meet their needs themselves. A local authority might be under a duty to meet needs which meet the eligibility criteria where:
  - (a) a person has assets below the means test threshold, in which case the local authority would be providing some financial support, or
  - (b) the person has assets above the threshold but has nonetheless asked their responsible local authority to meet their needs (under section 18(3) of the Act). A local authority's duty under this section of the act only applies to individuals requiring residential care who are not already in residential care in October 2023, and who have not been in residential care in the 6 months prior to this (unless this residential care was paid for by the NHS or purchased by the individual on a temporary basis, for example respite care). This does not affect the local authority's duty to meet needs under section 18(3) when individuals do not require residential care. Nor does it

affect a local authority's discretion to meet needs, should it choose to do so.

- 1.8 Personal budgets: where a local authority is responsible for meeting a person's eligible needs, the statement will be in the form of a personal budget (see chapter 11 'Personal budgets' in the CASS guidance). This is the case regardless of how much financial support the person is in receipt of (if any), and regardless of whether the person also commissions any services to meet non eligible needs. The personal budget will set out what the cost is to the local authority of meeting the person's care and support needs, as set out in a care and support plan. It will also record how much of that cost the adult will be charged by the local authority, and the amount that the local authority pays (that is, the balance). It is only the amount that the person is charged by the local authority, minus daily living costs where applicable, that will count towards the cap. Any financial contribution a local authority makes towards meeting a person's care and support needs does not accrue towards the cap.
- 1.9 Where the person has an arrangement that means they pay their financial contribution directly to the provider, for metering purposes this financial contribution (less top-ups and daily living costs) is the amount that the local authority is charging the person. Similarly, where a local authority pays a provider net of client contributions, it is the amount that the local authority is charging the person towards the overall cost of their care, as set out in their personal budget, which counts towards the cap.
- 1.10 It is important that the local authority considers the principles of setting personal budgets as set out in chapter 11 of the CASS guidance, which remains a tool for personalisation. This includes that where there are eligible needs not being met by the local authority, they also need to be included in the personal budget. The personal budget should be maintained to reflect the current care plans in place and what the person is actually charged, even where this fluctuates, to ensure that accrued costs are accurate.
- 1.11 Independent personal budgets: where a local authority is not responsible for meeting a person's eligible needs, the statement will be in the form of an independent personal budget. This will set out what the cost would be to the local authority if the local authority was meeting the person's eligible needs and the amount of daily living costs (where applicable). The amount set out in the independent personal budget of what it would cost the local authority, less daily living costs (where applicable), should be the amount that accrues towards the cap (see chapter 2 'Independent personal budgets' in this document).

- 1.12 In order to effectively support the operation of the cap, the local authority should keep the independent personal budget up to date to reflect a person's eligible care and support needs. A person may decide to purchase more or less care than the local authority would, but it is still the cost that the local authority would pay towards the person's care that counts towards the cap. Similarly, a person may have an annuity arrangement, whereby an insurance company pays for the person's care fees direct to the provider. The person will still progress towards the cap at the amount it would cost the local authority to meet the person's eligible needs.
- 1.13 When a self-funder who has been meeting their own eligible care and support needs reaches either the cap or the upper capital limit, the local authority will start to meet that person's care needs. On the basis they are now receiving local authority financial support to meet their needs, the person will no longer have an independent personal budget but should instead be provided with a personal budget. Further detail is set out in 'Moving from an independent personal budget to a personal budget' in chapter 2 of this document'.
- 1.14 The local authority must also maintain a care account (see chapter 3 'Care accounts' in this document) to keep track of the person's progress towards the cap. Drawing on information in a person's personal budget or independent personal budget, a care account records the costs accrued towards the cap ('accrued costs'). It can also be a useful tool to help the person and local authority to plan and prepare for their ongoing costs and to take account of when the person may be eligible for local authority support or may reach the cap.
- 1.15 In order for costs to accrue towards the cap, eligible needs have to be met. This means that where needs have not been met, the person would not progress towards the cap during that time. Similarly, the person may choose to have their needs met informally by a friend or family member, meaning, a carer as defined in section 10 of the act. If the local authority was meeting the person's needs under section 18(1), it would not be required to meet any needs which are being met by a carer who is willing and able to do so. As such, needs met by a carer would not count towards the cap.
- 1.16 When a person is approaching the cap, the local authority should ensure that the person understands the benefits and implications of this and their options for meeting their needs after they reach the cap. The local authority should prepare to carry out the necessary work in sufficient time to ensure that there is a smooth transition and in particular, it is in a position to meet the person's eligible needs as soon as the cap is reached. When a person's accrued costs reach the cap, the local authority must inform the person and meet their



eligible needs (see paragraphs 1.71 – 1.76 on preparations for reaching the cap).

- 1.17 After the cap has been reached, unless the person objects, the local authority must pay the costs of care to meet the person's eligible needs for care and support. For those receiving care in a residential home, they will continue to be responsible for their daily living costs. The local authority can therefore make a charge to cover the amount attributable to these, as set by Regulations, in accordance with the guidance on financial assessments set out in chapter 8 of the CASS guidance. The person receiving care, or a third party on their behalf, may continue to make – or choose at that stage to make – top-up payments for a more expensive preferred choice of accommodation, provided this is in accordance with the conditions contained in Annex A of the CASS guidance.

## Daily living costs

- 1.18 For those receiving care in a residential home, daily living costs must be deducted from the cost charged by the local authority or the amount set out in the independent personal budget to arrive at the amount that counts towards the cap. The main purpose of daily living costs is to ensure fairness in the rate of progress towards the cap between those who receive care in a residential home and those living at home and accessing domiciliary care. The regulations set a national, notional amount that is attributable to daily living costs. The amount is to be reviewed annually and updated as considered appropriate. Daily living costs will not accrue towards the cap, and people remain responsible for paying daily living costs once they reach the cap and continue to receive care in a residential home.
- 1.19 The concept of daily living costs does not change the amount a person with eligible care needs has to contribute towards the total cost of their care package as they progress towards the cap. It also does not change what providers are able to bill for a person's care package, either before or after a person has reached the cap.
- 1.20 For someone with a personal budget who has not yet reached the cap, the financial assessment calculates the maximum the person can be charged for their overall care costs. The person is then charged according to the cost of having their needs met and the financial assessment. The amount the person is charged is not affected by daily living costs. For someone below the cap, daily living costs are only relevant for calculating the amount that counts towards the cap. The amount attributable to daily living costs is deducted from the total amount the person is charged to arrive at the amount that counts

towards the cap, which is recorded in the care account. Where the amount that a person is charged is less than the amount attributed to daily living costs, then none of their contribution will accrue towards the cap.

- 1.21 For those with an independent personal budget, their independent personal budget should reflect both what the total cost of meeting their needs would be to their local authority and the amount attributable to daily living costs. The difference between these 2 figures (that being, the total amount minus daily living costs) will be the amount that meters towards the cap.
- 1.22 Where a person is in receipt of NHS Funded Nursing Care or another joint package of health and social care (a package of care and support that is jointly funded by NHS and local authorities), and the person receives residential care, in order to calculate the amount that meters towards the cap, daily living costs should be deducted from the total cost of the care package excluding the NHS-funded component.
- 1.23 Once a person reaches the cap, the local authority can no longer charge them to meet their eligible care and support needs under section 18 of the Act, but can continue to charge them for daily living costs. The local authority must apply the same means test (as set out in chapter 8 'Charging and financial assessment' in the CASS guidance) when charging a person for daily living costs. This means that capital below the lower capital limit – currently set at £20,000 – is not taken into account in the assessment. As such, some people will be entitled to financial support from the local authority for paying daily living costs.
- 1.24 When to deduct daily living costs: for the purpose of deciding whether a given care setting should be regarded as residential care in this context (and therefore whether daily living costs must be deducted from the total cost of meeting the person's eligible needs when metering towards the cap, and may continue to be charged after the person meets the cap) the local authority may want to consider which social care allowances the person is, or would be, left with. If they are, or would be, left with the personal expenses allowance, the care is residential and daily living costs must be applied in the calculations of costs accruing towards the cap.
- 1.25 The local authority should consider whether the overall package of care and support that is being charged for includes accommodation. Where it does, daily living costs must be deducted from the amount accruing towards the cap. This is irrespective of where a provider may choose to explicitly separate out accommodation and care costs. If both accommodation and care are being provided under the same agreement, then daily living costs must be deducted

from the amount accruing towards the cap. In these scenarios, once someone has hit the cap the local authority may continue to charge daily living costs.

#### 1.26 Summary of key points relating to daily living costs:

- daily living costs do not count towards the cap
- a person can be charged daily living costs once they have reached the cap
- daily living costs are means-tested (before and after reaching the cap)
- assets below the lower capital limit cannot be charged against to fund daily living costs

### **Case Study 1: applying daily living costs**

Gerry has moved to a care home from his rental flat. He has £96,000 in savings and has an income of £140 per week.

The local authority arranges the care for Gerry and is charged £524 per week by the care home for the care that Gerry receives.

Following a financial assessment, the local authority concludes that they can charge Gerry £418.35 from his income and savings, towards his care package. They do so, and the local authority pays the remaining £105.65.

When considering what counts towards the cap, the local authority first needs to subtract the amount attributable to daily living costs: £212. This does not count towards the cap. This means that the amount of Gerry's contribution that counts towards the cap, and is recorded in his care account, is £206.35 as this is the remaining amount from the total that Gerry is charged.

### **Assumptions**

Daily living costs will be set at the equivalent of £200 a week in 2021 to 2022 prices. For illustrative purposes the case studies assume £212 for daily living costs in all years (although this is subject to change). Personal expenses allowance in 2022 to 2023 prices at £25.65 per week.

## Case Study 2: where daily living costs exceed assessed maximum contribution

Imogen lives in a nursing home and has an income of £193.65 per week. She has £19,000 in savings and her husband still resides in their family home. This means that all Imogen's savings are protected, and the value of her home is not taken into account in determining her contribution towards her care.

The local authority maintains the contract with Imogen's nursing home, and the provider charges £980 per week for the care that Imogen receives.

Following a financial assessment, the local authority assesses that they can charge Imogen £168 towards her care package from her income. The local authority pays the remaining £812.

When considering what counts towards the cap, the local authority first needs to subtract the amount attributable to daily living costs. As the amount Imogen is charged is less than £212, her whole contribution is considered to be spent on daily living costs and therefore no amount will count towards the cap.

### Assumptions

Daily living costs will be set at the equivalent of £200 a week in 2021 to 2022 prices. For illustrative purposes the case studies assume £212 for daily living costs in all years (although this is subject to change). Personal expenses allowance in 2022 to 2023 prices at £25.65 per week.

### Top-ups

- 1.27 'Top-up' payments are only applicable to those whose needs a local authority is meeting through a residential care arrangement. The person, or a third party on their behalf, may choose, if conditions set out in the Care and Support and After-care (Choice of Accommodation) Regulations 2014 are met, to make additional payments for a preferred accommodation that meets the person's needs. Arrangements for top-up payments must be made in accordance with Annex A of the CASS guidance.
- 1.28 Summary of key points on top-up payments:
  - top-up payments do not count towards the cap

- the person receiving care, or a third party on their behalf, remains responsible for any agreed top-up payments before and after reaching the cap
- top-ups are not means-tested but are only available to those meeting the financial (and non-financial) conditions set out in Regulations
- a person could deplete their assets below the lower capital limit to fund top-ups

## How people start metering towards the cap

- 1.29 Anyone assessed by a local authority as having eligible care and support needs as defined as such under the Act, whether a new entrant or an existing social care user, can begin to progress towards the cap from October 2023 onwards. Costs incurred before October 2023 do not count towards the cap, unless the person is resident in a local authority that participates in the trailblazer initiative.
- 1.30 In readiness to introduce the cap on care costs in England, some local authorities are completing care needs assessments early. However, this does not mean those people assessed early can start metering towards the cap prior to October 2023.
- 1.31 A person can only accrue costs towards the cap if they have been assessed as having eligible needs. Costs begin to accrue from the point at which the local authority becomes required to carry out a needs assessment, that is, from the point when the person contacts the local authority to request a needs assessment, or from the point of referral by a third party. To avoid disputes arising, the local authority should develop processes to confirm the request or referral.
- 1.32 There may be cases where there is a delay between the needs assessment being requested and the local authority completing the needs assessment and meeting a person's needs. In order for costs to accrue retrospectively from the point at which a needs assessment was requested, the person must subsequently be assessed as having eligible needs, and have met their needs in the interim period. In cases where a person starts purchasing care to meet their needs between requesting and receiving a needs assessment, the person can start to meter from the point at which they started meeting their needs.

- 1.33 For this period, the person should be considered as a self-funder who is meeting their own needs. The costs that accrue towards the cap should therefore be based on the amount it would have cost the local authority to meet their eligible needs (less daily living costs where applicable). The local authority should consider asking the person to provide evidence that needs were being met during this period, for example, in the form of a care receipt or care contract (see also the section ‘Verification of needs being met’ in chapter 2 of this document).
- 1.34 Only the cost of meeting eligible care needs according to the act accrues towards the cap. Therefore, where it is apparent that the person has not met their needs fully or their care needs have changed (for example their needs have been met by a carer, as defined by section 10 of the Act), the local authority should update the personal budget or independent personal budget and amend the person’s care account to reflect this.
- 1.35 When a person first contacts the local authority to request a needs assessment, the local authority should inform the person that the cost of care that the person purchases can only accrue towards the cap from the period after the request for a needs assessment, and only if the person is subsequently found to have eligible needs and a personal budget or independent personal budget is prepared. The accrual of costs in respect of eligible needs met during this period will be based on the rules set out above. Additionally, the person should be advised on the amount that will count towards the cap – that is, what the cost to the LA would have been to meet their eligible needs in this period - if they are found to have eligible needs.
- 1.36 The local authority should consider prioritising putting care and support arrangements in place even where a personal budget is not yet agreed. Chapter 5 of the CASS guidance and section 19 of the act sets out the powers of the local authority to meet care and support needs in cases which appear to be urgent, and where a needs assessment has not been completed.
- 1.37 Once a person has been assessed as having eligible care and support needs, the local authority must create a care account and prepare their personal budget or independent personal budget. The person could, if they choose to, specifically ask to not progress towards the cap, in which case a care account would not be required. In this scenario, the local authority should explain to the individual the implications of opting out of progressing towards the cap.
- 1.38 If the adult refuses the assessment but lacks capacity to do so, the local authority must carry out the assessment if this is in the adult’s best interests. Where the person is found to lack capacity in respect of the assessment,

consenting to services or making financial decisions, the local authority must establish whether there is someone appointed under a Lasting Power of Attorney or a deputy appointed by the Court of Protection with relevant authority. The local authority must work with any such people. Further information on further action needed can be found in chapter 8 'Charging and financial Assessment' in the CASS guidance. Where a person lacks capacity to consent to the local authority carrying out a financial assessment, and there is no authorised person, an application to the Court of Protection may be required for a property and affairs deputy. This application can be made by the family or local authority. Where a person has capacity in respect of the financial assessment but does not consent to the local authority carrying a financial assessment out, the local authority may still decide to meet some or all of the adult's eligible needs for care and support. In these circumstances, an assessment would have to be made as to what, if anything, a person should contribute towards the cost of the care arrangement the local authority decides to make, and this will be written into the personal budget they are issued with.

## **What does and does not count towards the cap**

- 1.39 Care and support costs that count towards the cap are the costs of any provision that meets eligible needs as defined under the Act. The introduction of the cap does not affect eligibility as set out in the ['Eligibility Regulations'](#). In line with the intention of personalisation in the Act, as part of the person's needs assessment, local authorities must consider all of the adult's care and support needs; establish the impact of those needs on the individual's day-to-day life; and decide how the person's needs will be best met, for example whether they are best met in a care home, or whether the person could benefit from community-based services. It is the provision of care to meet eligible care needs which forms the basis of the costs that count towards the cap (less daily living costs where applicable).
- 1.40 Where the local authority is meeting the person's needs, it is only the amount that the person is charged to contribute towards their overall care costs to meet eligible needs (less daily living costs where applicable), that will count towards the cap. Where there is an agreement in place whereby the local authority pays a provider net of client contributions, for example to a care home, it is the amount the local authority is charging the person (even if the person's contribution is made direct to a provider) which counts towards the cap. Further information on payments being made on a gross or net basis can be found in chapter 12 'Direct payments' in the CASS guidance.

- 1.41 Personal budgets must be used to set this out clearly and should be used as the starting point by local authorities to calculate a person's cap contribution. However, sometimes the amount presented in a personal budget may differ to the actual costs that a person is charged. This could be due to, for instance, late changes to a person's care schedule or temporary fluctuations in care needs. In these circumstances, the local authority may use care related invoices to establish what counts towards the cap.
- 1.42 As set out in the Act, in order for costs to accrue the local authority must consider whether the person's eligible needs are being met in whole or in part by a carer, as defined in section 10 of the Act. Any eligible care needs met by a carer do not count towards the cap. Further detail on this is set out in paragraph 1.15. A carer's assessment may need to be undertaken at the same time as the needs assessment, to ascertain the extent to which a person's eligible needs will be met by a carer.
- 1.43 'Meals on wheels' services can be an important function in meeting a person's needs and support living independently at home. The local authority should consider to what extent the food and transport components should be charged for. It should consider parity with daily living costs and how it currently charges for the service.
- 1.44 Disability Related Expenses (DRE) (see Annex C 'Treatment of income' in the CASS guidance) should be disregarded to ensure a person eligible for local authority financial support gets to keep sufficient funds to meet basic needs. For self-funders paying for their care in full, DRE also do not need to be taken into account and reflected in a local authority's estimate of what it 'would cost to meet a person's needs' in an independent personal budget.
- 1.45 A person will continue to accrue costs based on what they are charged for the meeting of their care needs, even if they fall behind with paying the amount charged by the local authority. The local authority should use established local debt recovery mechanisms to aim to recover any outstanding debt before the person reaches the cap.
- 1.46 The following provides a summary of what does and does not count towards the cap:

## **Costs that count**

- 1.47 The following costs count towards the cap:



- for a person whose needs are being met by the local authority: the amount that the individual is charged to contribute towards the cost of meeting their eligible needs as arranged by the local authority, less daily living costs where applicable
- for a self-funder paying to meet their own eligible care and support needs: what the cost to the local authority would be if they were to meet the person's eligible care and support needs, less daily living costs where applicable

## **Costs that do not count**

1.48 The following costs do not count towards the cap:

- costs of meeting eligible care and support needs incurred before October 2023, unless the person is resident in a local authority that participates in the trailblazer initiative
- any financial contribution from the local authority towards an individual's care package
- for people who receive residential care, daily living costs at the level set in regulations
- for people whose needs are being met by the local authority, any top-up payments the person or a third party chooses to make for a preferred choice of accommodation
- any administrative or brokerage fees that the local authority may charge for arranging support
- costs of meeting non-eligible needs, even where the local authority has chosen to meet those needs
- costs of any services that the local authority are providing as a means of prevention and that do not meet an eligible need
- the cost of care and support services that are provided under other pieces of legislation (for example, free care provided under section 117 of the Mental Health Act 1983)

- services that the local authority does not charge for (for example, NHS-funded nursing care for people in care homes, Continuing Health Care, reablement, aids and minor adaptations)
- interest or fees charged under a deferred payment agreement

## **Calculating a person's contribution**

- 1.49 The local authority should calculate the person's contribution towards the cap as per the information above. They must also consider the guidance set out on financial assessments set out in chapter 8 'Charging and financial assessment' in the CASS guidance.
- 1.50 For people who fall within the means test, what a person can be charged to contribute towards their care costs and therefore the person's progress towards the cap depends on their income and assets. The person's tariff income, calculated from their chargeable assets as per Annex B 'Treatment of capital' in the CASS guidance, will apply as originally financially assessed and be recalculated on an annual basis as part of the person's annual financial reassessment. For further detail see paragraph 8.17 in chapter 8 'Carrying out a financial assessment' in the CASS guidance.

## **Setting out which costs count towards the cap**

- 1.51 The costs which count towards the cap must be set out in either a personal budget where the local authority is meeting the person's needs (that is, is arranging their care or is providing financial support), or an independent personal budget (for people who are meeting their own needs). In order to effectively support the operation of the cap, the local authority should keep the personal budget or independent personal budget up to date to reflect a person's eligible care and support needs.
- 1.52 Where the local authority is meeting a person's needs, the local authority must clearly set out in the personal budget what the cost is of meeting that person's eligible needs for care and support. Personal budgets can include other elements separate to the cost of meeting the person's eligible needs, for example, other amounts of public money that the person is receiving, or the cost to the local authority of meeting non-eligible needs where the local authority has chosen to.
- 1.53 The local authority should make it clear in the personal budget which costs form the basis of what accrues towards the cap: that is, the person's

chargeable contribution towards the care package to meet their eligible needs. This will mean clearly distinguishing this cost if, for example, the personal budget includes services to meet non-eligible needs, is pooled with the personal budget of another person or a carer or is combined with other sources of funding available to the person.

- 1.54 While personal budgets fulfil other functions, an independent personal budget exists solely for the purpose of determining the costs that will count towards the cap for a person who meets their own eligible care and support needs. Local authorities must prepare an independent personal budget for each person ordinarily resident or present in their area who has been assessed by them as having eligible needs which the local authority is not going to meet. The independent personal budget must set out what the cost to the local authority would be if it was meeting the person's eligible needs. Comprehensive guidance on personal budgets and independent personal budgets can be found in chapter 11 'Personal budgets' in the CASS guidance and chapter 2 'Independent personal budgets' in this document.

## Care accounts

- 1.55 It is important that an up-to-date record is kept of the costs a person is accruing towards the cap. This record is called a care account and its principal purpose is to accurately record a person's progress towards the cap.
- 1.56 Local authorities must maintain a care account for each person ordinarily resident in their area (or present but of no settled residence) who has been assessed by them as having eligible needs, whether or not those needs are met with local authority support. In the event a person moves to another local authority, or ceases to have eligible needs, the local authority must retain the account for 99 years after the account was last used, or in the event a local authority is notified of a person's death, they should retain the account for 7 years after their death.
- 1.57 Except in a small number of specific circumstances, local authorities must provide anyone for whom they are maintaining a care account with a statement of that account at least every 12 months to keep them informed of their progress towards the cap. They must also provide statements at other times where a person makes a reasonable request.
- 1.58 Comprehensive guidance on care accounts can be found in chapter 3 of this document. This includes further information on the small number of exceptions to the requirement to provide annual statements.

## Continuity of care and cross-border issues

- 1.59 For general guidance on local authority responsibilities when a person moves from one local authority to another, please see chapters 19 'Ordinary residence', 20 'Continuity of care' and 21 'Cross-border placements' in the CASS guidance. This section considers some of the typical situations that local authorities may face in relation to a person moving local authorities and how that affects the process of accruing costs. However, none of the below changes or impacts existing guidance on ordinary residence, inter-local and cross-border issues.
- 1.60 If a person notifies their local authority that they intend to move to another local authority, the first local authority must, for the purposes of the cap, provide the second authority with a copy of the person's care account, which includes how much a person has accrued towards the cap. They will also need to provide a copy of any care and support plan prepared for the person or, if they are meeting their own needs, a copy of their independent personal budget and their most recent needs assessment.
- 1.61 The second local authority must then assess the person's needs, prepare a care and support plan where applicable, and determine what it would cost them to meet the person's eligible needs. A carer's assessment may also need to be undertaken at the same time as the new needs assessment, as the person's caring situation may have changed. Where the first local authority notifies the second local authority of the adult's intention to move prior to the move, the local authorities should work together to ensure continuity of care and comply with the requirements in sections 37 and 38 of the Act.
- 1.62 For the purpose of the cap on care costs, the second local authority must ensure that any amount charged, or the amount it would have cost the local authority to meet a self-funder's needs, should remain the same until the second local authority has completed the relevant assessments (as required under section 38(1) of the Act).
- 1.63 For a self-funder meeting their own needs, if, having completed the assessments, the second local authority considers that the amount it would have cost it to meet the person's eligible care needs (where those needs were met) in the period after the person moved to the second local authority would have been more than the first local authority such that the person would have accrued more costs towards the cap, the second local authority should adjust the person's costs to reflect this. This should be from the point at which the person became ordinarily resident or present (but of no settled residence) in its area. So as not to disadvantage the person as a result of delayed needs

assessments, where the local authority considers that the amount it would have cost it to meet the person's eligible care needs would have been less than under the first local authority, no changes should be made to the person's accrued costs.

- 1.64 A local authority may become aware, through verification checks, that a self-funder with an independent personal budget has moved to a different local authority without informing them. If no advance notification of a move is given (such that the continuity of care provisions in sections 37 and 38 of the act do not apply) local authorities should advise the person that they may find their accrued costs adjusted to reflect what it would have cost the second local authority to meet their needs from the point they became ordinarily resident or present (but of no settled residence) in that area. This could mean that the rate at which costs accrue is less than what it would have been under the first local authority.
- 1.65 If a local authority arranges for a person to receive care in a residential setting in another local authority area, the person is generally deemed to continue to be ordinarily resident in the area of the first or 'placing' authority. They will therefore progress towards the cap based on the cost to the first local authority of meeting their eligible needs for care and support as set out in the personal budget. The first local authority will be responsible for maintaining the person's care account and notifying the person should they reach the cap.
- 1.66 If a person is meeting their own eligible needs and arranges residential care in another local authority to the one in which they lived previously, they become ordinarily resident in the local authority in which they are receiving care. It is therefore the responsibility of that local authority to maintain the person's care account, and they will progress towards the cap based on what the cost would be to that local authority were it to arrange the care required to meet their eligible needs. This cost will be set out in their independent personal budget. Any accrued cost to date will not be affected, except in the circumstances set out in paragraph 1.63 above. The first local authority must review the person's independent personal budget, and when no further action is needed, the local authority no longer needs to update the care account.
- 1.67 A person who asks a local authority for a needs assessment may have had a gap in their care journey, and had their eligible needs met in a different local authority several years prior. Therefore, the local authority where the person requested the needs assessment should ask the person (or the person with power of attorney or other representative) whether they have received care in a different local authority in England after October 2023, and if so, where. Where this is the case, the local authority should contact the previous local

authority for the necessary care account information to be transferred. See case study 6 'Long breaks in care journey' for an example.

- 1.68 For data protection reasons, a person should be made aware that data and information in relation to their needs, care account and personal budget or independent personal budget as set out in paragraph 1.60 will be shared if they move to a new local authority. If the person explicitly refuses for the first local authority to share this data, then the second local authority may consider undertaking a new needs assessment, opening a new care account and restarting accrued costs. The local authority should explain that the implication of not sharing information could mean their accrued costs are set back to zero.
- 1.69 If a local authority in England arranges for a person to receive residential care and support (or care in other specified accommodations) in another country of the UK, and the person will still be ordinarily resident in that authority's area, that local authority must maintain that person's care account and the person will progress towards the cap at the cost to that local authority of meeting their eligible needs. However, if a person living in England arranges their own residential care in another country of the UK, and they become ordinarily resident in that country, they will not progress towards the cap.
- 1.70 Where a local authority in another country of the UK arranges for a person to receive residential care in England and the person will not be ordinarily resident in England, the person will not progress towards the cap as other countries of the UK are not subject to the Act. However, a person living in another country of the UK who arranges their own residential care in England will normally become ordinarily resident in the local authority where they are receiving care. They will therefore be able to progress towards the cap.

## **Preparations for reaching the cap**

- 1.71 Before a person's accrued costs reach the cap, the local authority should make preparations to ensure that there is a seamless transition to local authority support and continuity of care. In particular, the local authority should ensure that they carry out the necessary work in sufficient time to ensure that they are able to fulfil the legal obligation to meet the person's eligible needs as soon as the cap is reached, unless the person decides they do not want the local authority to do so. This will require the local authority to plan ahead in conjunction with the person to decide how their needs are going to be met.
- 1.72 When a person is expected to reach the cap within 18 months of a care account statement being issued, that statement must include an indication of

the date at which the person is expected to reach the cap. The statement should caveat that this is just an estimate. The statement, or information sent alongside it, should also clearly set out the steps for transition, including what action, if any, they need to take.

1.73 In particular, the local authority should ensure that the person and their deputy, attorney or other representative, has a clear understanding of the costs the local authority will meet when the cap is reached. If the person is receiving care in a care home this will include ensuring that they understand:

- that they will be responsible for meeting or contributing to their daily living costs
- that they or a third party will continue to be responsible for meeting any top-up payments for a preferred choice of accommodation already being paid, should they wish to continue with a current arrangement
- that they may be required to move accommodation if they choose not to pay a top-up and the cost of their care package is more than the amount that the local authority would pay to meet their needs
- that if they are transitioning to local authority support, that they or a third party (if the required conditions are met) may choose to make top-up payments for a preferred choice of accommodation

1.74 In respect of a person who is receiving local authority support, at an appropriate time before the cap is reached, the local authority:

- should ensure that they have an accurate overview of the person's finances and consider whether a new financial assessment is necessary
- should prepare to provide the person with a revised personal budget when the cap is reached to reflect that the local authority will be responsible for meeting the cost of care to meet the person's eligible needs
- may want to consider whether it would be appropriate to review the person's care and support plan in accordance with this guidance; and
- should consider any top-up payment the person or a third party proposes to make or continue to make and where appropriate make preparation for the arrangement to commence at the point the cap is reached

1.75 The local authority should agree with the person how they wish their eligible needs to be met on reaching the cap. If their eligible needs can be met by

means of a direct payment, the person may choose to receive one and maintain their contract with their existing care provider themselves.

- 1.76 Alternatively, the person may choose to ask the local authority to arrange their care. Where the person does so, the local authority should advise the person of the available options, including the option (if the required conditions are met), for those in residential care for the person themselves or a third party on their behalf to make a top-up payment to remain in a preferred choice of accommodation or to move to a setting within their personal budget.

## **Reaching the cap**

- 1.77 When a person reaches the cap, the local authority should ensure that there is a smooth transition and:
- must inform the person that they have reached the cap
  - should provide the person with a revised personal budget where the local authority was previously meeting the person's needs
  - in cases where the person was previously meeting their own needs, the local authority must provide the person with a personal budget
  - should undertake a financial assessment, if necessary, to establish whether the person is eligible for financial support for their daily living costs
  - must then meet the person's eligible care and support needs in the way they have agreed with the person

## **Adjustments to the cap**

- 1.78 The act sets out clear parameters for how the level of the cap must be reviewed but does not prohibit changes at other times. Section 16 of the act provides for an annual adjustment to the cap where the Secretary of State considers that there has been a change in the level of average earnings over the review period of 12 months. Section 71 of the act requires the Secretary of State to carry out a detailed review on the operation of the cap and to publish a report on the outcome of that review every 5 years. This also includes the level of daily living costs and the upper capital limit.



- 1.79 Where the level of the cap is adjusted, and the person's needs remain the same, the extent of a person's progress towards the cap (that is, their accrued cost as a percentage of the level of the cap) will be maintained. For example, if a person is 50% towards the cap when the level of the cap is changed, adjustments will be made to ensure that the person's progress remains at 50%. When the percentage to reflect the person's progress towards the cap is calculated, the local authority should round up to 2 decimal places, and any resulting changes to accrued cost rounded up to the nearest pound sterling. Any adjustments must be clearly reflected in the person's next care account statement.
- 1.80 Where a person has had long gaps in their care journey, and the local authority stopped updating the person's care account to reflect adjustments to the cap, once the person is reassessed as having eligible needs the responsible local authority must readjust the person's total accrued costs in their care account such that the % progress towards the cap is retained.

## **Self-funders requesting that the local authority meet their needs**

- 1.81 The local authority must make self-funders who want to progress towards the cap aware that they can ask the local authority to meet their needs at any time. A local authority will have a duty to meet the self-funder's needs, if all of the following conditions are met:
- the person asks them to
  - the local authority finds (through an assessment) that the person has eligible care and support needs (defined as such under the Act)
  - the person is not, and has not been, in residential care in the 6 months preceding October 2023 (unless this residential care was paid for by the NHS, or purchased by the individual on a temporary basis, for example respite care)
- 1.82 The final condition in the above paragraph, which has the effect that individuals who are already in receipt of residential care in October 2023 are not initially able to use section 18(3), will be reviewed after 12 months (in October 2024) and will be removed after no more than 18 months (by April 2025). Further details will be provided in future guidance.

- 1.83 The local authority must explain what it would mean for the person to have the local authority meet their needs (for example, that following an assessment it might be determined that their needs are better met in a different care setting).
- 1.84 A local authority must meet the needs of a section 18(3) user in the same way as it would any other individual whose needs it is meeting, for example by:
- commissioning the person's care (see paragraph 8.33 of the CASS guidance on charging for care and support in a care home)
- or
- acting as a broker between the self-funder and the provider to negotiate a contract at a local authority rate (see paragraphs 10.15 – 10.18 of the CASS guidance on care and support planning). However, under a brokering arrangement, the local authority remains under a duty to meet the person's needs, which is retained even if the person defaults on payment
- 1.85 When meeting the needs of an individual under section 18(3), the local authority must provide the individual with a personal budget rather than an independent personal budget (see the section above on progressing towards the cap). Guidance relating to meeting needs and the setting of personal budgets applies equally regardless of a person's funding status.
- 1.86 In meeting an individual's needs under section 18(3), the local authority must take into consideration the individual's preferences in the same way as it would those of any other individual whose needs the local authority is meeting. For example, the authority should consider the person's goals in approaching the authority for support, and the level or nature of support desired.
- 1.87 If a self-funder asks the local authority to meet their eligible needs and these needs are to be met in residential accommodation, and if the person expresses a preference for particular accommodation that is more expensive than the Local Authority would pay to meet their eligible needs, a local authority must arrange this accommodation, provided certain conditions are met, including that the self-funder (or a third party on their behalf) pays a top-up payment to cover the difference in cost. Further detail on top-ups can be found at Annex A of the CASS guidance.
- 1.88 More generally, if a self-funder asks the local authority to commission care on their behalf which does not meet eligible needs and this is not related to accommodation costs (referenced above), the local authority can still choose to arrange that care. If the local authority does not wish to arrange the care on

behalf of the self-funder, it cannot prevent a self-funder from choosing to arrange this care independently, unless the local authority has evidence to believe that the person may be trying to deliberately avoid paying for care and support costs through depriving themselves of assets – either capital or income (see Annex E ‘Deprivation of assets’ in the CASS guidance).

- 1.89 Any care provided beyond what a local authority assesses as being required to meet an individual’s eligible needs does not count towards the cap.
- 1.90 The local authority may not always be able to commission equivalent care at a consistent price when commissioning care to meet the eligible needs of individuals under section 18(3), meaning that people with similar needs may pay different amounts and may therefore progress towards the cap at different rates. This is permitted, but the local authority must not treat self-funding individuals whose needs the local authority is meeting differently to other groups, for example by consistently commissioning their care at a higher rate or by consistently choosing a different model for arranging their care compared to those receiving local authority funding.
- 1.91 In commissioning care on behalf of a self-funder, a local authority may need to employ established local debt recovery mechanisms to retrieve payment from a self-funder (see Annex D ‘Recovery of debts’ in the CASS guidance).
- 1.92 The local authority must make clear to the self-funding person whose needs they are meeting that they may be liable to pay an arrangement fee in addition to the costs of meeting their needs, and that these fees would not count towards the cap. Such fees must cover only the costs that the local authorities actually incur in arranging care and should take account of the cost of negotiating and/or managing the contract with a provider and cover any administration costs incurred. Similar arrangements currently exist for domiciliary care (see chapter 8 (8.15, 8.55-.8.60) ‘Charging and financial assessment’ in the CASS guidance).

## **Case studies**

### **Case study 3: a local authority-supported person registering for the cap**

Ted is 74 years old. He has Parkinson’s disease and dementia and requires additional support.

On 1 November 2023, Ted moves into a local care home at a cost of £800 per week. His wife Rebecca (who has lasting power of attorney) contacts the local authority on his behalf to register him for a care account on 3 December 2023. The local authority conducts a needs assessment on 5 January 2024 and determines that Ted has eligible care and support needs which would continue to be best met in a care home at a cost to the local authority of £750 per week (including daily living costs at £212). Following his needs assessment, Ted decides that he wishes the local authority to commission his care and the local authority arrange for Ted to move to a new care home which can meet his needs at a cost of £750 per week.

Ted and Rebecca own a property worth £200,000, but as Rebecca continues to live in the home, it is disregarded for the purposes of the financial assessment. Ted and Rebecca downsized a few years ago and as a result Ted has a £50,000 share of their joint savings in addition to his £300 personal weekly income. As such, he qualifies for means-tested support. Ted is charged £394 per week to contribute towards his care costs. £212 of the total £394 charge will be considered as daily living costs and therefore will not count towards the cap. The remaining £182 will count towards the cap.

The local authority provides Ted with a personal budget reflecting these figures and creates a care account to track his progress towards the cap. From the date Rebecca approached the local authority on his behalf (3 December 2023) until the date Ted is given a needs assessment (5 January 2024), Ted meters towards the cap at £538 per week – £750 minus daily living costs at £212. For the period following his needs assessment, Ted progresses at the rate of his personal contribution of £182 per week.

<b>Counts towards the cap</b>	<b>Does not count towards the cap</b>	<b>Does not count towards the cap</b>
Care costs charged to Ted: £182 per week	Means-tested contribution from local authority: £356 per week	Daily living costs charged to Ted: £212 per week

### **Assumptions**

Daily living costs will be set at the equivalent of £200 a week in 2021 to 2022 prices. For illustrative purposes the case studies assume £212 for daily living costs in all years (although this is subject to change). Personal expenses allowance in 2022 to 2023 prices at £25.65 per week.

### **Case study 4: a local authority-supported person registering for and reaching the cap**

Zainab is 74 years old and has recently sustained injuries through a fall. She contacts her local authority to request a needs assessment and support. The local authority

determines Zainab has eligible needs. During the care and support planning process, Zainab and the local authority agree that her needs would be best met in her own home, costing £320 per week.

Zainab has savings of £45,000 from an inheritance. She is eligible for local authority financial support. She also has an income of £240 per week, including the new State Pension and Attendance Allowance.

Zainab starts to progress towards the cap at £145 per week: the amount that she is charged by the local authority to contribute towards the total cost of her care.

<b>Counts towards the cap</b>	<b>Does not count towards the cap</b>
Care costs contribution charged to Zainab: £145 per week	Means-tested contribution towards care costs paid by local authority: £175 per week

When Zainab reaches the cap, the local authority becomes responsible for paying the full cost of the £320 required to meet her eligible care and support needs.

## **Assumption**

Minimum Income Guarantee in 2022 to 2023 prices at £194.70 per week.

## **Case study 5: a self-funder asking the local authority to meet their needs**

Uri is aged 92 and has recently had a stroke. He contacts his local authority and is assessed as having eligible needs best met in a care home.

Uri previously lived alone in the home he owns, which is worth £250,000, and he also has an income of £270 per week, including the new State Pension and Attendance Allowance. As there is no qualifying relative who continue to live in his home, he does not benefit from a property disregard, and therefore is not eligible for means-tested local authority support.

Uri chooses to ask the local authority to commission his care. The local authority finds a placement for Uri in a care home at £600 per week (including daily living costs at £212).

The local authority provides him with a personal budget which sets out these costs. Uri is charged £600 to pay for his care and support package, and progresses towards the cap at £388 per week, excluding daily living costs.

<b>Counts towards the cap</b>	<b>Does not count towards the cap</b>
Care costs charged to Uri: £388 per week	Daily living costs charged to Uri: £212 per week

## **Assumptions**

Daily living costs will be set at the equivalent of £200 a week in 2021 to 2022 prices. For illustrative purposes the case studies assume £212 for daily living costs in all years (although this is subject to change). Personal expenses allowance in 2022 to 2023 prices at £25.65 per week.

## **Case study 6: long breaks in care journey**

Paul is 60 years old, and in 2025 is assessed by local authority 1 as having eligible needs. He meters towards the cap at £100 per week. 2 years later Paul's condition improves, and he no longer requires care. As a result, local authority 1 is no longer required to keep Paul's care account up to date, but it must retain his care account.

20 years later in 2047, Paul requires care again. In the meantime, he has moved to local authority 2.

Local authority 2 assesses Paul as having eligible needs and sets up a new care account on their system. They ask Paul if he previously had eligible needs and a care account to track the costs of meeting them operated by a different local authority.

After having confirmed that he previously received care in local authority 1, local authority 2 approaches local authority 1, which, in line with the legislation, has retained Paul's care account. Local authority 1 provides local authority 2 with a copy of Paul's care account, which confirms Paul's accrued costs and the level the cap was set at when his account was last updated. Paul's progress towards the cap at this point was 15%.

To ensure Paul's progress towards the cap is retained, before Paul starts metering again, local authority 2 readjusts 'Total accrued costs to date' so that it reflects 15% in relation to the current level of the cap in 2047.

## 2. Independent personal budgets

This chapter covers:

- what an independent personal budget is for and who it is for
- what counts towards the cap and how to approach the calculation of the independent personal budget
- verification of needs being met
- review and revision of the independent personal budget
- what happens when a person with an independent personal budget moves to a personal budget and what happens when someone with a personal budget moves to an independent personal budget

### Introduction

- 2.1 The capped system offers protection from unpredictable care costs by limiting the costs a person may face to meet their eligible care and support needs. In order to measure a person's progress towards the cap, it needs to be clear what does and doesn't count towards the cap.
- 2.2 Everyone with eligible needs for care and support will be given a statement which sets out the costs that will count towards the cap. Where the local authority is responsible for meeting those needs, the cost of meeting them will be set out in a personal budget. There is specific guidance regarding processes and practice on the setting of personal budgets in chapter 11 'Personal budgets' in the CASS guidance.
- 2.3 To ensure fairness, those whose needs are not going to be met by their local authority must progress towards the cap at a rate based on what the cost would be to the local authority of meeting their eligible care and support needs if it were required to do so. That cost will be set out in an independent personal budget, which will set out what costs will count towards the cap, as a personal budget does for a person whose needs the local authority is meeting. However, unlike a personal budget, which also serves the purpose of setting out the amounts that both the local authority and the person are contributing towards the person's care, an independent personal budget exists solely for the purpose of determining what costs will count towards the cap.

- 2.4 A person should not be given an independent personal budget if their local authority is meeting their needs in any way and a person should not have a personal budget and an independent personal budget at the same time.
- 2.5 The purpose of this chapter is to provide guidance to support local authorities in setting a person's independent personal budget to ensure that that this approach is consistent, fair and proportionate.

## Principles

- 2.6 Though the independent personal budget is a new concept introduced by the Act, the principles underpinning it are the same as for personal budgets. It is vital that the process for setting an independent personal budget is transparent, so that people are clear how their budget was calculated and what it means for them, and timely, to enable people to plan ahead. The process should also ensure that the independent personal budget is set at an amount which would be sufficient for the local authority to meet the person's eligible needs and which reflects the cost of quality care service provision available locally. This chapter provides further guidance on applying these principles to the calculation of the independent personal budget.

## People eligible for an independent personal budget

- 2.7 Anyone who is assessed as having eligible needs for care and support will be able to progress towards the cap. Where a local authority is not aware of a person's needs – for example, because they are unknown to the local authority and have not come forward for a care needs assessment, or because although they have the relevant capacity, they refuse that assessment (and there are no safeguarding concerns) – it cannot be determined that they have eligible needs. In such a scenario, the person cannot progress towards the cap. This does not affect the local authority's existing duty to help a person make informed financial decisions and their obligation to consider whether the person lacks the relevant capacity, for example to consent to the assessment. Further information on this can be found in Chapter 3 'Information and advice' in paragraph 3.46.
- 2.8 Where a local authority is responsible for meeting a person's eligible needs, that person will receive a personal budget as part of their care and support plan. If the local authority is not required to (and does not decide to) meet the eligible needs of a person ordinarily resident (or present but of no settled residence) in their area (for example, if the person does not want the local



authority to meet their needs), the local authority must provide the person with an independent personal budget, when requested to do so, and open a care account for them so that they can begin to accrue costs which count towards the cap.

## **Assessments for self-funders who wish to meter towards the cap**

- 2.9 Only the costs of meeting eligible care and support needs as defined as such under the act are taken into account when determining the amount that counts towards the cap. Local authorities must undertake an assessment for any person who appears to the local authority to have any level of need for care and support, either once the person directly contacts the local authority to request a needs assessment, or from the point of referral by a third party. They must also determine which of the person's needs may be eligible based on the eligibility criteria as set out in chapter 6 'Assessment and eligibility' in the CASS guidance.
- 2.10 Local authorities must meet their legal duties when carrying out a needs assessment for a self-funder who wants to start their care account, just as they would for a person whose needs they are meeting. This includes identifying the person's needs; how these impact on their wellbeing; and what outcomes they want to achieve. The local authority must also ensure that the person, their carer, and anyone else the person requests, are involved in the assessment. Local authorities must seek to ascertain whether the person is able to understand, retain, use, and weigh relevant information and communicate their views. If a person is not able to do these things and there is no appropriate individual to support and represent the person, the local authority must appoint an independent advocate. (See chapter 7 'Independent advocacy' in the CASS guidance).
- 2.11 The local authority should also use the initial assessment to advise individuals to comply with requirements for reviews, and to ensure that the local authority has their most up to date contact details, including any changes in their address. The local authority should make the person aware that if they move and fail to alert the local authority of this, then their accrued costs could be adjusted if there are differences in the cost of care between the first and second local authority which the local authority judges to be substantive. The local authority should also explain the implications of the local authority being unable to contact the person. Further detail on this is set out in the 'Moving to an independent personal budget' section of this chapter. The local authority

may want to consider explaining that these implications are also valid when the person loses mental capacity to make decisions about their finances.

- 2.12 Local authorities have a duty to carry out an assessment proportionately. In doing this they will need to establish, at an early stage in the assessment process, the wishes of the person being assessed, taking into account their presenting need and their circumstances, to ensure that the assessment is carried out appropriately and proportionately. Local authorities must also offer the person a supported self-assessment where they are able and willing to undertake it. Further detail is provided in chapter 6 'Assessment and eligibility' in the CASS guidance.
- 2.13 The local authority will also need to determine whether the person might qualify for financial support from the local authority. This will usually be done through a financial assessment. Where it appears very likely that a person's assets will exceed the threshold for financial support, the local authority may consider a 'light-touch' financial assessment. This approach enables a local authority to treat a person as if a financial assessment had been carried out where the local authority is satisfied of the person's ability to afford care fees. Guidance on how to undertake a financial assessment or a light touch assessment is set out in chapter 8 'Charging and financial assessment' under the subheading "Light-touch' financial assessments' in the CASS guidance.
- 2.14 A person who has the relevant capacity may also opt not to have a financial assessment, in which case, they are assumed to be over the upper capital limit of the means test for financial support. An independent personal budget will only be prepared when the local authority is not going to meet the person's eligible needs.
- 2.15 Following the needs assessment, the local authority must provide the person with personalised information and advice about how to meet their needs and how to prevent or delay the development of further needs. The assessment process also provides an ideal opportunity to help the person plan for their future care costs, and local authorities should consider what information and advice might help them to do this. Further detail on the duty of local authorities to provide information and advice can be found in chapter 3 of the CASS guidance. For example, it may be appropriate to talk to a person about their finances and how quickly they may become eligible for local authority financial support, and what steps they will need to take to ensure a smooth transition once they do become eligible for that support.
- 2.16 The act sets out that those who do not qualify for means-tested support and do not or cannot request that their local authority meet their needs must

progress towards the cap at what it would have cost the local authority to meet their eligible needs, had they been required to. The responsible local authority (that is, the one where the person is ordinarily resident or is present but of no settled residence) should make it clear that this could differ from the person's expectations about what is required to meet their needs and could be lower than what the person may currently be paying (see the 'Communicating the independent personal budget' section below). The decision about whether a self-funder's needs are eligible will be taken in the same way as if the local authority were meeting their needs, based on the eligibility criteria and taking into account where needs are being met by a carer.

- 2.17 Daily living costs do not count towards the cap for those in residential care. A person in residential care is also responsible for paying daily living costs once they reach the cap, as long as they are assessed as having the relevant means. Further details on daily living costs can be found in chapter 1 'Cap on care costs' in this document. Where the local authority determines that it could have sufficiently met a person's eligible needs in a different way and for less cost than the person has chosen, it is the cost of an arrangement that the local authority deems as sufficient for meeting the person's needs and that the local authority would have offered that counts towards the cap.
- 2.18 To help those whose needs the local authority is not responsible for meeting understand what does and does not count towards the cap, the local authority must issue them with a record, the independent personal budget, which states:
- what the cost would be to the local authority if it were to meet the person's eligible needs
  - if the person is in a care home, the amount that is deducted from the cost above for daily living costs
  - the amount that will count towards the cap

## **Calculating the independent personal budget**

- 2.19 A person's independent personal budget sets the amount that will count towards the cap. This must be based on the cost of an arrangement the local authority deems as sufficient for meeting the person's eligible care and support needs and would have offered if it were required to do so. The independent personal budget will only reflect the costs of services that support eligible social care and support needs that are not already being provided to the person under other pieces of legislation, and are not addressing a health

need (for example, relevant disability related expenses, or free aftercare provided under section 117 of the Mental Health Act 1983). See the 'Costs that do not count' section of chapter 1 'Cap on care costs' in this document.

- 2.20 As the local authority is not meeting the person's needs, there is no statutory requirement for it to prepare a full care and support plan in the process of setting an independent personal budget. The process of setting the independent personal budget should be proportionate, allowing the local authority to fulfil its statutory responsibilities, whilst placing no more of an administrative burden onto a local authority than is necessary and no undue burdens on the person involved to provide information to the local authority. However, the local authority should maintain a personalised approach consistent with the act and, as such, should also take into account the complexity of a person's needs and whether individual circumstances are likely to have an impact on the cost of meeting them. This will help ensure that, in the process of setting an independent personal budget, the complexity of a person's needs does not disadvantage them. A local authority should also consider whether the level and complexity of a person's needs mean that it would be more appropriate for the local authority itself to meet the person's needs, rather than to issue them with an independent personal budget.
- 2.21 The local authority must ensure it has a sufficient understanding of how it would meet the person's eligible needs, were it required to do so. Without this, the local authority would not be able to fairly estimate what the cost of meeting those needs would be. In taking a proportionate approach to estimating the costs, a local authority may wish to utilise the full range of existing information it has available, which might include doctors' reports and medical diagnoses. Additionally, where a person is already in receipt of care and support, the local authority may wish to assess the current provider's care plan against the needs assessment it will have conducted.
- 2.22 When setting an independent personal budget, the local authority should consider whether a more tailored approach is required to estimate the relevant costs. In some cases, it may be that, while there is no statutory requirement to do so, it would nonetheless be appropriate to support the process of setting an independent personal budget by preparing a care and support plan (see case study 8 below). Such cases might be those where a person is newly receiving non-temporary social care, will likely require specialist care and support which the local authority rarely commissions, or where the local authority has no recent experience of meeting needs of the relevant kind or complexity.
- 2.23 To ensure fairness, the independent personal budget should be calculated, as far as is practicable, on a consistent basis. It must also be reflective of what

the local authority would realistically pay for care. As part of the Market Sustainability and [Fair Cost of Care Fund](#) implementation in 2022/23, local authorities are required to conduct thorough, evidence-based cost of care exercises to determine the fair cost of care in their local area. Between 2023 and 2025, local authorities are expected to use Market Sustainability and Fair Cost of Care funding to make substantial progress towards paying providers a fair cost of care, on average, where they are not doing so already. Therefore, by October 2023, independent personal budgets will be expected to begin to reflect more sustainable rates for care (which in practice may vary from case to case and may be greater or less than the fair cost of care due to such factors as rurality, personalisation of care, quality, and wider market circumstances).

- 2.24 To ensure that the local authority's estimate of what it would pay to meet the person's eligible care and support needs is reflective of current rates, where possible, the local authority should make use of up-to-date cost data and try to set an independent personal budget based on the cost of equivalent care packages for people whose needs the local authority has been meeting, as set out in existing, recently set personal budgets. Alternatively, it might base the independent personal budget on the cost of quality local provision in the same manner as it would for a direct payment.
- 2.25 Whatever the local authority's approach, the independent personal budget should reflect what the local authority judges that it would expect to have paid for a care arrangement it would have made if the local authority were meeting the person's needs. This means that if a person in fact meets their needs through a different type of arrangement, it is the cost of the arrangement the local authority would have chosen that forms the basis of the independent personal budget.
- 2.26 Where relevant up-to-date cost data is unavailable – for example, where the local authority has not recently commissioned equivalent care and support - the local authority might employ other means to estimate likely costs. For example, it might undertake a 'dummy purchasing' process, by investigating – or speaking to a relevant provider about – pricing, obtaining a quote, or referring to any banded care rates it has developed.
- 2.27 In some situations, a local authority might identify multiple care and support arrangements that would be sufficient to meet a person's eligible care and support needs. If this is the case, the local authority is entitled to base the independent personal budget on the cheapest arrangement sufficient for meeting the person's eligible care and support needs.

- 2.28 Local authorities should seek to minimise, where possible, the influence of factors that drive sudden variation in the cost of commissioning care of a certain type, such as the availability of beds on a particular day or the status of any block contracts which may apply. For example, if a local authority holds the relevant data to enable it to do so, it might determine an average cost for a particular type of care over a relatively recent period where appropriate (see ‘sufficiency’ principle). It might do so in cases where it is aware that the prices contained in the most recent relevant personal budgets are not indicative of the usual commissioning rate.
- 2.29 Nonetheless, as is the case for personal budgets, independent personal budgets will reflect the fact that costs for care do vary within an authority to some extent, even in cases where equivalent care packages are commissioned. One factor accounting for non-sudden variation in costs includes the type of setting within an authority in which a person would likely receive their care. For example, depending on where the person is currently living and where their support network is located, there may be cost variation between rural or urban settings, or cheaper or more expensive parts of the local authority. In setting an independent personal budget, a local authority should bear such factors in mind, mirroring how the local authority would account for those factors in the personal budgets it sets.
- 2.30 In determining how to apply the framework above, local authorities should apply the same principles that underpin the calculation of personal budgets: transparency, timeliness, and sufficiency. Further guidance in relation to each is given at paragraphs 2.31 – 2.40 below. Throughout the process of calculating the independent personal budget, the local authority must also support the overall outcome of promoting a person’s wellbeing and independence in a way that fits with the Act’s vision of personalisation (see the wellbeing principle at chapter 1 ‘Promoting wellbeing’ in the CASS guidance. This means that conversations should be had about the person’s individual circumstances, how their needs may be met through signposting to community organisations and resources, and the role their family and friends play in their support network (see paragraph 6.10 in the CASS guidance).

## Transparency

- 2.31 It is possible that self-funders approaching the local authority to register for the cap will have limited awareness of what counts as an eligible care and support need; which aspects of the person’s payments will and won’t count towards the cap; the types of care and support required to meet their eligible needs; and/or what these would cost. It is therefore important that the local authority

provides clear information on these factors to enable the person to understand how their independent personal budget has been calculated and on what basis. This will give people confidence that the independent personal budget allocation is correct and therefore sufficient to meet their eligible care and support needs, helping to minimise the likelihood of complaints.

- 2.32 In particular, the local authority should ensure that the person understands from the outset that their independent personal budget must reflect, and will only reflect, what the cost would be to the local authority of meeting their eligible care and support needs as defined in the Act, which may be different to the rate the person has been quoted, is paying, or is expecting to pay. In particular, the local authority should communicate clearly to the person that the monetary values contained in an independent personal budget are reflective of what the local authority (and not the person, or their current provider) deems to be sufficient for meeting a person's needs, following the needs assessment and eligibility determination (see chapter 6 'Assessments and eligibility' in the CASS guidance for more information on needs assessments).
- 2.33 Where a local authority identifies that a person is receiving services that the local authority assesses are not meeting eligible care and support needs, the cost of those services do not count towards the cap. The local authority should communicate that this will account for some difference between the amount that the person is paying and the amount listed in the independent personal budget. Additionally, the person should be made aware that where the local authority concludes that it would have met the needs of the person in a different way to the arrangement the person currently has in place, it is the cost of the arrangement that the local authority would have deemed as sufficient for meeting the person's eligible needs that forms the basis of the independent personal budget, and that this may also account for a difference between the 2 values.
- 2.34 The person should also be made aware that they are able to challenge their independent personal budget through the local authority's internal complaints system if they believe that the amount would not be sufficient for the local authority to meet their eligible needs. In addition, local authorities might wish to point individuals towards other systems of resolution and recourse, such as the local government and Social Care Ombudsman.
- 2.35 The local authority should also provide information and advice to help the person to understand that their accrued costs will be backdated to the date they requested an assessment (or October 2023 if the assessment was requested prior to that date) and that any costs incurred prior to that date will

not count towards the cap. The local authority should make clear that, of the costs incurred prior to the assessment, only those deemed as meeting eligible needs as set out in the independent personal budget will count towards the cap (see the section 'How people start metering towards the cap' in chapter 1 of this document).

- 2.36 The local authority should also provide information about reviewing the independent personal budget, including how often the person can expect their independent personal budget to be reviewed, what can trigger a review and how they can request a review if they think one is needed.

## **Timeliness**

- 2.37 Once an independent personal budget has been set, a person's progress towards the cap will be backdated to the date on which they requested an assessment or the date on which the local authority identified that the person may have a need (but not earlier than October 2023). Local authorities should ensure that the independent personal budget is finalised and communicated to the person within a reasonable time of the needs assessment being conducted. The process should not be any less straightforward or take longer than it would usually take to finalise a personal budget for a person receiving local authority support. The local authority should give an indication at the outset of how long the process might be expected to take, in order to provide clarity for the person affected and reduce the number of enquiries or complaints that could be made about progress.
- 2.38 The local authority may choose to propose a period of time, following communication of the independent personal budget, during which the person is invited to consider the independent personal budget rate and contact the local authority with any queries. This would provide an opportunity for the local authority to offer further information, advice or explanation and may as a result reduce the number of challenges relating to independent personal budgets. However, for this to be a meaningful exercise the local authority should ensure that the person understands that the amount is determined on the basis of what the local authority would pay, and that they understand the parameters of an independent personal budget as set out in paras 2.31 and 2.32. The local authority should also make clear that this does not impact on the individual's right to make a formal complaint to the local authority at a later date.



## Sufficiency

- 2.39 The local authority must have a reasonable expectation that the costs in a person's independent personal budget would be sufficient to meet their eligible needs if the authority were required to do so. The independent personal budget should therefore be consistent with personal budgets recently set by the local authority for people with similar eligible needs or care packages, or other available up to date data on prices of local authority commissioned care. Local authorities should ensure that the costs on which the independent personal budget rate will normally be based reflects quality local market provision, and should consider on a case-by-case basis whether there are factors which would make meeting that person's needs more expensive (for example, whether the person is in an urban setting, or a more expensive part of the authority). In some circumstances it may be appropriate to consider the costs incurred in a person's arranging their own care (for example, the costs incurred in complying with legal obligations as an employer), in the same way as they would be considered when determining the amount of a direct payment.
- 2.40 As set out in chapter 1 of this document, the independent personal budget will set out what it would cost the local authority to meet a person's eligible needs. Where the person has needs that are being met by a carer at the time of the assessment, the local authority must take into account the carer's willingness and ability to continue to meet those needs, as well as the impact of them continuing to do so. A carer's assessment may need to be undertaken to ascertain the extent to which a person's eligible needs will be met by a carer.

## Meeting needs

- 2.41 The local authority must offer information and advice to a self-funder about the different types of care and support available and the choice of providers in the local area. This will help the person to make an informed decision about their options for care and support (see chapter 3 'Information and advice' in the CASS guidance). The local authority must also consider whether the person concerned would benefit from any preventative services and provide information and advice about how to reduce or delay any needs (see chapter 2 'Preventing, reducing or delaying needs' in the CASS guidance).
- 2.42 Though the local authority must provide information and advice about ways to meet needs and should encourage the person to arrange care that would be sufficient to meet their eligible needs, a person with an independent personal budget is entitled to meet their needs in any way they choose. This may be

different from the way that the local authority would have opted to meet their needs if it were under a duty to do so.

- 2.43 However, in order to progress towards the cap, the local authority should be satisfied that the person has in fact met their eligible needs. Where the person has chosen not to meet their eligible needs or has had their eligible needs met by a carer, as defined by section 10 of the Act, they would not progress towards the cap during that time.
- 2.44 If the local authority considers that the person is not arranging appropriate care, they should discuss the implications on the person's wellbeing. See paragraph 2.61 in the section 'Verification of needs being met' for further information.
- 2.45 The person may purchase care and support to meet non-eligible needs. The costs of doing so does not count towards the cap and the local authority cannot prevent the person from making such payments. However, if the local authority has concerns about the sustainability of the person's chosen arrangement, they should consider whether the person would benefit from financial information and advice, particularly that which is provided independently of the local authority. If the local authority is satisfied that it has sufficient evidence to believe that a person is deliberately depriving themselves of assets – either capital or income - to avoid paying for future care, the local authority should consult Annex E 'Deprivation of assets' in the CASS guidance.
- 2.46 There will be some people who choose to have their needs met by a carer, as defined by section 10 of the Act. Any needs met by such a carer would not be needs that the local authority would be under a duty to meet, and therefore the meeting of them does not count towards the cap. Therefore, if the local authority finds the person had their needs met by a carer whilst continuing to progress towards the cap, the local authority should complete a new needs assessment to re-evaluate what unmet eligible care needs the person has, and provide a new independent personal budget may also consider adjusting the accrued costs recorded in the person's care account. More information on how to adjust a person's accrued costs can be found in the chapter 3 'Care accounts' in this document.
- 2.47 A self-funder may choose not to meet their needs either at all or only in part. They are entitled to do so, but as set out above, the local authority must offer information and advice about how the person's needs can sufficiently be met and how to prevent the development of further needs. Again, the local authority should consider whether the person's independent personal budget

should be revised and their accrued costs adjusted to reflect where a person has not met their needs at all or only in part, making use of evidence obtained as part of the verification process.

- 2.48 The local authority will also need to be alert in their interactions with self-funders to any signs that the way in which the person is choosing to meet, or not meet, their needs arises from a situation that may require further safeguarding enquiries. This could include, for example, a situation where a family member is coercing the person into buying cheaper services that do not meet their needs or a situation where a person with care needs who is neglecting to care for their own personal hygiene, health or surroundings is fearful of buying any services that require someone to enter their home. See chapter 14 'Safeguarding' in the CASS guidance for further information.
- 2.49 The local authority will also need to be alert to any signs of financial abuse and will take the leading role in making enquiries into financial abuse concerns. Financial abuse relating to attorneys and deputies will be investigated by the Office of the Public Guardian (OPG), and financial abuse relating to appointees will be investigated by the Department for Work and Pensions (DWP). Local authorities should not underestimate the potential impact of financial abuse on a person's health and wellbeing. Chapter 14 'Safeguarding' in the CASS guidance provides further guidance on the potential signs of financial abuse. It also provides information on when to inform the OPG or the DWP. Most financial abuse could be considered theft or fraud and so would constitute a criminal offence for the police to investigate.

## **Review and revision of the independent personal budget**

- 2.50 To ensure that the amount stated in the independent personal budget continues to accurately reflect the person's eligible needs and what it would cost the local authority to meet those needs, local authorities must keep the independent personal budget under general review. In many cases it may be appropriate to do so annually in order to align it with reviews of needs and financial assessments, but the local authority should consider whether it may need to do so more frequently in the beginning stages of a person's journey towards the cap, or if the person's needs are likely to change.
- 2.51 A local authority must have reasonable and rational grounds for making any revision to an independent personal budget, which could involve reasons for thinking that the costs the local authority would incur in meeting the person's needs are no longer correct, or that the person is not meeting their needs. The independent personal budget must be reviewed if the local authority becomes

aware of a change in the person's circumstances that it is satisfied would affect the cost of meeting the person's needs. The review of someone's independent personal budget should also reflect changes in market prices or local authority fees.

- 2.52 The person's provider is not under an obligation to let the person's local authority know if the person's needs have changed.
- 2.53 The local authority must also review the independent personal budget at the reasonable request of the person or someone acting on their behalf (for example, if the person believes that their independent personal budget has been miscalculated or that their eligible needs have changed, or that the independent personal budget does not reflect the likely cost to the local authority, were it to commission the person's care). This request may be made at any time. In considering a request for a review, the local authority should consider the guidance on reviews of care and support plans in chapter 13 of the CASS guidance.
- 2.54 When the local authority is deciding whether or how to revise the independent personal budget they must involve the person, their carer (if they have one), and/or anyone else the person asks to be involved. Where the adult lacks capacity to ask the authority to do that, the local authority should involve any person who appears to the authority to be interested in the adult's welfare (see chapter 7 'Independent advocacy' in the CASS guidance). This is the case irrespective of the reason for the independent personal budget being revised. At the review point, it may become evident that the person may lack capacity to make relevant decisions. If so, a mental capacity assessment may be necessary.
- 2.55 If the local authority considers that the person's circumstances may have changed in a way that might affect the independent personal budget, then it must, to the extent that it consider appropriate, carry out a new needs assessment and make an eligibility determination, and must revise the independent personal budget accordingly.
- 2.56 If a person refuses a needs assessment and the local authority considers the refusal to be unreasonable, the local authority is not required to keep their care account up to date. This means that the care account may cease to track future progress towards the cap. However, it is important that the local authority considers whether there are other underlying reasons for the person refusing an assessment. Where the adult is experiencing, or may be at risk of, abuse or neglect, or lacks capacity to refuse the assessment, the local authority may still be required to carry out an assessment (see the section

'Refusal of assessment' at 6.20 – 6.21 and chapter 14 'Safeguarding' in the CASS guidance).

- 2.57 Following a review, the local authority must notify the person of the outcome, regardless of whether it has resulted in a change to the independent personal budget. Where the independent personal budget has changed, the local authority must explain the reason for each change and should provide information about how the person can query the change if they wish to do so.

## **Verification of needs being met**

- 2.58 To support the process of reviewing a person's independent personal budget, and mitigate any risk of safeguarding issues, the local authority should consider some form of verification to check whether a person is meeting their eligible care and support needs. The local authority should establish a process that aims to confirm that needs are being met and that the person's independent personal budget is reflective of their eligible care and support needs.
- 2.59 The local authority should consider best practice and processes used for direct payments and consider mirroring these when verifying whether a person with an independent personal budget has sufficiently met their needs, insofar as for direct payments the local authority must not require that the person's needs be met in a particular way. The local authority should encourage the person to arrange flexible and innovative packages of care to meet their eligible care and support needs and should be mindful that the person may choose to arrange a package of care that the local authority would not typically commission.
- 2.60 The local authority should consider the most appropriate and accessible method of establishing whether needs have been met, which could, for example, involve a request to see a care contract, care receipts, or bank statements. Where possible, the local authority should consider working with care providers to automate verification processes. There may be circumstances where the person arranges for another individual to provide care and support (for example, a personal assistant), in which case, the local authority should consider requesting proof of employment as part of verification checks. This is to mitigate the risk that people could accrue costs towards the cap, but have their needs met by a carer as defined by section 10 of the Act, which should not count towards the cap.

- 2.61 If the local authority considers that the person is not arranging appropriate care, it should discuss the implications on the person's wellbeing. Where the person is not meeting their eligible needs or is having their eligible needs met by a carer, the local authority may consider adjusting the accrued costs recorded in the care account during that time. More information on how to adjust a person's accrued costs can be found in chapter 3 'Care accounts' in this document.
- 2.62 To assist with the verification process, the local authority should explain that the person should keep receipts of their care expenditure from the point at which their independent personal budget is agreed. If a person refuses to provide any proof that they are meeting their eligible care and support needs, the local authority may consider whether the person's independent personal budget should be reviewed to ensure it is reflective of the person's eligible care and support needs. See paragraphs 2.50 to 2.57 on reviewing and revising independent personal budgets.

## **Communicating the final independent personal budget**

- 2.63 In communicating the final independent personal budget the local authority should provide clear information regarding:
- the purpose and function of an independent personal budget
  - the basis for the calculation
  - what does and doesn't count towards the cap
  - how often the independent personal budget rate will be reviewed and what may trigger a review
  - the person's options if they are not content that the amount specified in their independent personal budget would be sufficient to meet their eligible needs
  - what kinds of changes in a person's circumstances should be notified to the local authority by the person
  - how the person's accrued costs will be recorded in the care account
  - how often the person will receive care account statements as a minimum

- that costs accrued towards the cap are subject to the verification process and the circumstances when these could be adjusted
- 2.64 The local authority should ensure that the information above is communicated in a suitable format and in such a way that the person is able to understand it. In particular, the local authority should have regard to the guidance regarding the accessibility of information (see chapter 3 'Information and advice' in the CASS guidance).
- 2.65 The local authority must also make the person aware that they can ask the local authority to meet their eligible needs, and that the local authority has a duty to do so when requested if the individual has not been in receipt of residential care in the 6 months preceding October 2023 (unless this residential care was paid for by the NHS, or purchased by the individual on a temporary basis for example, respite care). Further detail can be found in 'Requesting that the local authority meet needs' in chapter 1 'Cap on care costs' in this document. This is particularly important where the local authority has reason to believe that a person may have difficulty in arranging their own care.

## **Dispute resolution**

- 2.66 The local authority should take all reasonable steps to avoid disputes regarding the calculation of the independent personal budget. This should include involving the person as far as is practicable in the process. As with all aspects of care and support under the Act, local authorities must fulfil their responsibilities under the Mental Capacity Act 2005, conducting a capacity assessment where appropriate, supporting individuals who may lack capacity to make a decision themselves (for example, presenting information in an easy to understand format) and, where the individual is lacking capacity in regard to the specific question, consulting family, carers, advocates and any appropriate person to arrive at a best interests decision.
- 2.67 The local authority should also be able to reduce the number of potential disputes by providing information and advice that enables the person to understand how their independent personal budget has been set, and by abiding by the principles of transparency, timeliness and sufficiency in determining the independent personal budget rate. Disputes can also be minimised through management of the person's expectations. A local authority should make it known in its initial conversations with the person that only the amount that the local authority considers as sufficient for meeting the person's eligible care and support needs will count towards the cap and that this will be

based on a care solution that the local authority would have been content to offer (see paragraph 2.19 above).

- 2.68 The local authority should provide clear information at the outset about the process set out in this chapter, including an indication of expected timescales wherever possible. The local authority should also provide information about its complaints procedure.
- 2.69 Local authorities should keep a full record of the basis for the decision. Under the principle of transparency this should be shared with the person concerned.

## **Moving from an independent personal budget to a personal budget**

- 2.70 A local authority comes under a duty to meet a person's needs in the following 3 scenarios: i) where the value of the person's assets has fallen below the upper limit of the means test threshold for local authority financial support; or ii) because the person's accrued costs have reached the cap; or iii) because the person has assets over the upper limit of the means test threshold but has nonetheless asked the local authority to meet their needs and is eligible to do so.
- 2.71 In any of these scenarios, the person is entitled to move to local authority support and, if they choose to do so, must be provided with a care and support plan and a personal budget. This will help the person to decide how their needs are going to be met, including the option to receive support through direct payments. Further guidance is provided at chapter 10 'Care and support planning' in the CASS guidance.
- 2.72 Where the local authority comes under a duty to meet a person's needs as a result of the person reaching the cap, the local authority is also under a duty to ensure that the person moving to local authority support receives that support as soon as they become entitled to it. To ensure that the transition is as smooth as possible, local authorities should identify people nearing the cap early and take steps to begin the care and support planning process with them (see chapter 10 of the CASS guidance).
- 2.73 The local authority does not have an obligation to let the care provider of the person in receipt of an independent personal budget know when the person is approaching the cap.



- 2.74 The local authority should also provide information and advice to help a person to understand where changes in their circumstances may mean that they qualify for local authority support through the means test. This will help to ensure that people come forward for a financial assessment at the appropriate time. The local authority must also inform the person that they have the right to ask the local authority to meet their needs at any time if the individual has not been in receipt of residential care in the 6 months preceding October 2023 (unless this residential care was paid for by the NHS, or purchased by the individual on a temporary basis for example, respite care) and explain what that would mean for the person.
- 2.75 Where a local authority has alerted the person that they are approaching the cap but has been unable to successfully contact them, the local authority should consider whether this could be due to illness or a lack of mental capacity to make relevant decisions. The local authority should have had a conversation about the implications of not maintaining contact from the beginning of the person's care journey (see the earlier section 'Assessments for self-funders who wish to meter towards the cap' in this chapter). Once a person reaches the cap, the local authority will be under a duty to meet the person's eligible needs under section 18 and may not charge the person for meeting those needs. However, where the local authority is unable to contact the person and as a result is unable to prepare a care and support plan for the person and begin to meet their eligible needs, the local authority is not required to reimburse them for any costs accrued since they reached the cap. However, the local authority should consider reimbursing a person (partially or wholly) if it was considered that there were mitigating circumstances which prevented the person from being contactable by the local authority.
- 2.76 For all those who are newly entitled to access local authority support and who are already in receipt of care and support, the local authority must make clear that the person's care arrangement may change once the local authority begins meeting their needs. This is because the local authority may determine that some of the services the person is in receipt of may not be meeting eligible care and support needs as defined in legislation; or the person may be receiving a different kind of care package to that which the local authority would commission to meet the person's eligible needs; or the local authority could commission the same care elsewhere at a lower cost. However, when preparing the care and care support plan, the local authority must have regard to all relevant factors, as set out in section 25 of the Act.
- 2.77 Where a person has been accessing residential care prior to becoming eligible for local authority support, the local authority may offer the person care in a different residential setting for any of the reasons above, provided that the

settings offered would sufficiently meet that person's eligible needs. However, a local authority cannot do so if moving the person to the alternative (less expensive) setting would result in the person's needs ceasing to be met, meaning that the person's eligible needs can only be met in their current accommodation or one of a similar cost. In such cases, a top-up for the accommodation is not chargeable, even if other conditions on a local authority's right to charge top-ups are met.

- 2.78 If moving the person would not mean that their needs cease to be met, the local authority must arrange for the person to remain in their current, preferred, accommodation so long as the conditions on top-up payments for preferred accommodation listed in Annex A of the CASS guidance are met. If the conditions are not met, for example, if neither the person nor a third party on their behalf is willing and able to make a top-up payment to cover the additional cost, or if the accommodation does not meet the required criteria, then the local authority does not need to arrange for the person to remain in their current accommodation. In such a scenario, the person may decide to make their own arrangement to receive care in their preferred accommodation or to take up one of the arrangements that the local authority has offered.
- 2.79 In cases where a person newly entitled to local authority support wishes to utilise care services over and above what the local authority deems as sufficient to meet their eligible needs (for example, by receiving additional hours of home care), or where the person prefers to meet their needs in a different kind of setting to the that identified in the person's care and support plan (for example, domiciliary care rather than residential care), it is at the discretion of the local authority whether to make those preferred arrangements. The local authority is only under an obligation to meet the person's eligible needs in the ways identified in the person's care and support plan. If the local authority chooses not to meet a request for care and support services that differ from those listed in their care and support plan, then the person can opt out of local authority support and approach a provider themselves to arrange those services. Alternatively, the local authority might wish to consider supporting the person by means of a direct payment for the amount specified in the person's personal budget, so that the person can make arrangements to commission a care package that goes beyond or costs more than what the local authority would arrange with a provider directly.

## **Moving from a personal budget to an independent personal budget**

- 2.80 If a person ceases to be eligible for local authority support because the value of their chargeable assets increases to above the upper capital limit – for example, if the value of their home stops being disregarded in their financial assessment - the local authority must inform the person that they have the right to ask the local authority to continue to meet their needs by arranging their care if the individual has not been in receipt of residential care in the 6 months preceding October 2023 (unless this residential care was paid for by the NHS, or purchased by the individual on a temporary basis for example, respite care), and explain what that means for the person.
- 2.81 If the person decides that they do not want their local authority to arrange their care, the local authority must provide the person with an independent personal budget in accordance with the ‘Calculating an independent personal budget’ section of this chapter. The person will continue to accrue costs towards the cap on top of their recorded spend to date in their existing care account, at a rate that accords with the amount the local authority would pay for an arrangement sufficient to meet the person’s needs (as set out in the independent personal budget).

## **Case studies**

- 2.82 The following case studies provide examples of a self-funder registering for and reaching the cap, and of a local authority developing a care and support plan for someone with an independent personal budget.

### **Case study 7: a self-funder registering for and reaching the cap**

Joe is 80 years old and has recently had a stroke. His daughter contacts his local authority on his behalf, and he is assessed as having eligible needs that would be best met in a residential care home.

Joe lives alone in the home he owns, worth £220,000, which is included in his financial assessment when he moves into a care home. Joe is therefore not eligible for means-tested support.

Joe’s daughter decides they don’t want to ask the local authority to commission his care. The local authority provides Joe with an independent personal budget, determining that if it were meeting his needs in a care home it would cost £650 per week (including daily living costs at £212). Joe chooses a care home which costs £800 per week and meets the full cost. Joe progresses towards the cap at £438 per week: £650 minus daily living costs set at £212.

<b>Counts towards the cap</b>	<b>Does not count towards the cap</b>	<b>Does not count towards the cap</b>
Care costs paid by Joe: £438 per week	Additional amount paid by Joe for preferred care home accommodation: £150 per week	Daily living costs paid by Joe: £212 per week

When Joe reaches the cap, the local authority becomes responsible for paying the cost of meeting his eligible care and support needs (less daily living costs). Joe prefers to retain the contract with his current care home. Following a discussion of his options, the local authority satisfies itself that Joe is able to pay a £150 'top-up' to cover the difference between the cost of his preferred accommodation and what it would cost the local authority to meet his needs. This means that Joe can stay in his care home.

The local authority then agrees to arrange for Joe's needs to continue to be met in his current accommodation by making a direct payment of £438 per week. Joe continues to pay the remaining difference to meet the cost of his contract, consisting of £212 daily living costs and the £150 per week top-up.

<b>Local authority</b>	<b>Joe</b>	<b>Joe</b>
Meets Joe's eligible needs with a direct payment of: £438 per week	Additional amount paid by Joe for preferred care home accommodation: £150 per week	Daily living costs: £212 per week

## **Assumptions**

Daily living costs will be set at the equivalent of £200 a week in 2021 to 2022 prices. For illustrative purposes the case studies assume £212 for daily living costs in all years (although this is subject to change). Personal expenses allowance in 2022 to 2023 prices at £25.65 per week.

## **Case study 8: a local authority developing a care and support plan for a person with an independent personal budget**

Aisha is a young adult who suffers a fall, resulting in a severe brain injury from which she develops severe and multifaceted care needs that will require specialist support. As Aisha now lacks capacity, Aisha's representative contacts her responsible local authority to discuss her care options.

The local authority conducts a needs assessment where they determine that Aisha's needs include a low threshold for risk perception, poor self-awareness and mobility, and angry outbursts.

Due to an inheritance, Aisha does not qualify for financial support and her representative believes it is in Aisha's best interests to commission care independently of the local authority. After considering whether Aisha's needs would be better met if it were to take responsibility for meeting Aisha's needs, the local authority determines that Aisha's representative is acting in her best interests. The local authority therefore sets her an independent personal budget so she can meter towards the cap.

The local authority has not set a personal budget for anyone with a similar set of needs in many years and has no recent experience of commissioning care for similar cases. It therefore works with Aisha's representative to develop a full care and support plan to determine a care arrangement that would be sufficient to meet her needs. Once the plan is complete, the local authority decides the best way to determine the cost of the services the plan includes is to 'dummy purchase' those services by obtaining representative quotes from relevant providers.

## 3. Care accounts

This chapter covers:

- what a care account is for and who is eligible to receive one
- what should be recorded in the care account
- what information needs to be provided in care account statements
- adjustments to accrued costs and changes in circumstances
- retention and portability of care accounts

### Introduction

- 3.1 In order for the cap on care to operate effectively it is vital that an up-to-date record is kept of a person's progress towards the cap. For this reason, the act requires local authorities to maintain a care account for each person who has been assessed as having eligible care and support needs, regardless of whether those needs are met by the local authority or by the person themselves. The care account enables a local authority to monitor a person's progress towards the cap and, when the person is nearing the cap, work in conjunction with them to ensure that the local authority is able to take responsibility for the costs of care to meet their eligible care and support needs as soon as the cap is reached.
- 3.2 The care account will also allow people to track their own progress towards the cap, giving them peace of mind and enabling them to plan their finances to meet their needs until such time as they reach the cap.

### Who is eligible for a care account

- 3.3 If a person's care and support needs are assessed as meeting the eligibility criteria and they are ordinarily resident in the area of a local authority, the local authority must open a care account for the person. This is regardless of whether the local authority is meeting the person's needs.
- 3.4 A person's care account should be opened at the point they receive a personal budget or independent personal budget for the first time. For a person whose needs are being met by the local authority, the care account will record the

amount that the person is charged for their care costs using the person's personal budget as the starting point. As a personal budget may not always reflect the actual costs charged to a person, the local authority may also use a person's care related invoices to update their care account. For a self-funder who is commissioning their own care, their rate of progress towards the cap is based on what it would have cost the local authority to meet their eligible needs and will be reflected in their independent personal budget.

- 3.5 Costs incurred by a person can begin accruing from the point the local authority became required to carry out a needs assessment. If the person requested the assessment or was already receiving local authority support before October 2023 then their costs will accrue from October 2023. Any costs incurred before October 2023 will not be included in their care account. Further detail can be found in chapter 1 (paragraphs 1.29 – 1.32) of this document.

## Components

- 3.6 The care account must record:
- the total cost of meeting someone's eligible needs to date (not including any optional top-ups)
  - the person's current rate of progress towards the cap
  - the total amount the person has accrued towards the cap to date
  - any amount attributable to daily living costs
  - any adjustments to the accrued costs

## Provision of statements

- 3.7 In order for the cap to provide peace of mind and support people to plan financially, people will need to be aware of what counts towards the cap and how much they have progressed towards the cap to date. When a person has a needs assessment that identifies eligible needs, the local authority will prepare a statement setting out what it would cost the local authority to meet the eligible needs. This will take the form of a personal budget, if their needs are to be met by the local authority, or an independent personal budget for a self-funder who arranges their own care. At the same time the local authority must open a care account for the person.

- 3.8 Once the person begins progressing towards the cap, they will be kept informed of their progress by means of care account statements. The local authority must provide these statements at least once every 12 months from the point that the account is opened (subject to the discretion discussed below under 'When care account statements are not required') or upon the reasonable request of the person or their representative. It is at a local authority's discretion as to what may be deemed a reasonable request. This could include, albeit is not limited to, situations where:
- a person has experienced a significant change in circumstances which may have resulted in a change to their independent personal budget or personal budget.
  - a person now has a representative or new representative acting on their behalf.
  - a person is accruing towards the cap at a rapid rate and annual statements may not allow sufficient time for them to plan for when they are estimated to reach the cap.
- 3.9 As a minimum, statements should be provided in an electronic format but where this method is not appropriate for the person, the local authority must provide statements in another format, including hard copies where the person has requested to receive their statement in that way. In producing care account statements, the local authority must continue to ensure it meets its duty to abide by the accessible information standard.
- 3.10 People may want to access their care accounts online and local authorities are encouraged to provide a secure online method to allow this, for example through a citizen portal. Doing so would allow people to make full use of the standardised information contained within their care account at a time that suits them to inform their financial planning and it may also reduce the administrative burden on local authorities by reducing the number of requests for statements. Providing online access does not, however, affect the requirement to provide annual statements.
- 3.11 To help a person to consider their financial position, local authorities should consider where possible combining care account statements with deferred payment statements. As a minimum it would be good practice to provide both the cap and deferred payment statements at the same time, when the issuing of both statements aligns every 12 months, since deferred payment statements are provided every 6 months. When issuing a combined statement, local authorities may wish to take the opportunity to inform or remind the



person of the availability and potential benefits of taking independent financial advice (see chapter 3 'Information and advice' in the CASS guidance).

## **When care account statements are not required**

- 3.12 In some circumstances, providing annual statements may have little benefit to the person and cause a disproportionate administrative burden to local authorities. The local authority is therefore not required to provide annual statements in certain circumstances, set out below, though it should always consider whether there may be other reasons why a person would benefit from receiving annual statements. In all cases the local authority must still maintain the care account and provide a statement if requested to do so by the person or their representative.
- 3.13 When a person has reached the cap, the local authority must retain their care account as a record of the person's entitlement to local authority support, but is not required to provide further statements unless requested to do so.
- 3.14 Where a person has not received care and support or accrued any costs towards the cap since their last statement, for example because they do not currently have eligible needs, an annual statement will not show any change in the person's progress towards the cap. The local authority may therefore consider whether to provide a statement. In doing so the local authority should consider how long a person's progress towards the cap has been stable and whether there are other changes of which the person should be informed.
- 3.15 There are circumstances where the costs of care to meet the person's eligible needs are already being paid in full by the local authority or the person's financial contribution is less than their daily living costs (if applicable). In these cases, the person is also not accruing new cost towards the cap and the local authority may consider whether or not it would be beneficial to continue to provide regular statements. If there is a chance that the person's circumstances may change suddenly, for example if they stopped benefitting from a property disregard, it may be prudent to continue to provide regular statements to keep the person informed.
- 3.16 Where a person has moved and become ordinarily resident in another local authority, once the transfer of care accounts has been completed, the first local authority will no longer need to provide care account statements to the person. More information on the responsibilities of local authorities to ensure continuity of care can be found in the chapter 1 'Cap on care costs' (paragraphs 1.59 – 1.70) in this document.

- 3.17 In all cases, the care account must still be maintained so that the person's progress towards the cap is up-to-date if they later become liable to pay their care costs, in which case regular statements should restart. Regular statements should not stop in cases where the local authority is fully meeting the person's needs for only a short period of time, for example where a person is receiving reablement services.
- 3.18 In all cases, including when the person has reached the cap, to support data collection for monitoring and evaluation, the local authority should still continue to update the person's care account with the amount that the local authority is paying to meet the individuals eligible care needs.
- 3.19 If the local authority thinks it may be appropriate to stop regular statements, the person affected should be informed and given the opportunity to express their preference. This should be taken into account in the local authority's decision making.

## Content of statements

- 3.20 In preparing a care account statement, the local authority should have regard to the guidance regarding the accessibility of information and advice (see chapter 3 'Information and advice' in the CASS guidance) to ensure that the person receiving the statement is able to understand easily where they are in terms of progressing towards the cap. This includes ensuring that the statement is provided in a suitable format.
- 3.21 The regulations set out the minimum information that must be included in a care account statement, but the local authority should consider what opportunities there may be to provide wider information and advice relevant to the person's care and support in the statement (see the section 'providing wider information' below).
- 3.22 The statement must set out:

Item	Explanation
Current level of the cap	This is the level of the cap at the point that the statement is sent.

<b>Item</b>	<b>Explanation</b>
Total cost of meeting the person's eligible care needs	<p>For those with a personal budget, this will be the total cost of their care package as specified in their personal budget, that is, the person's contribution and the local authority's contribution combined.</p> <p>For those with an independent personal budget, this will be the amount that it would cost the local authority to meet their needs.</p> <p>This does not include any amount paid in 'top-ups' as these are go beyond meeting a person's eligible care needs.</p>
Current rate of progress towards the cap	<p>For those with a personal budget, this is the amount specified as the amount that the person is charged for their care costs generally based on what is set out in their personal budget, exclusive of daily living costs and top-ups where applicable.</p> <p>For those with an independent personal budget this is the weekly costs specified in their budget, exclusive of daily living costs where applicable.</p>
Daily living costs	Any amount attributable to daily living costs.
Total accrued costs to date	<p>For those with a personal budget this will be the running total of what the person was charged to contribute to their care package, less daily living costs and top-ups, and any adjustments to accrued cost where applicable.</p> <p>For those with an independent personal budget this will be based on the running total of the amount that it would cost the local authority to meet their needs, including any adjustments to accrued cost where applicable.</p>
Adjustment in the accrued costs	Any adjustments in the accrued costs (for example, temporary hospital stay or adjustments as a result of an increase in the cap) since the last statement.
Indicative date of when the person is expected to reach the cap	An indication of when the person would be expected to reach the cap must be added to the statement if the date falls within 18 months of the statement being prepared.

3.23 The government intends to publish additional guidance with further details on the titles of the care account statements, including standardised explanations, to provide a helpful aid for local authorities to adhere to.

3.24 The purpose of setting out daily living costs is to help make clear to a person in a residential home receiving the statement that daily living costs are excluded from the costs accrued towards the cap and the person will be

responsible for paying these costs after they reach the cap. The amount of daily living costs specified in the statement should be the same as that specified in the person's personal budget or independent personal budget, which may be a weekly or monthly amount. The local authority is not required to keep a running total of the daily living costs a person has paid.

- 3.25 The local authority should include a caveat in the care account statements that the total accrued cost is subject to verification checks for those with independent personal budgets, or finalised invoices for those with a personal budget.
- 3.26 The care account statement will also play an important role in ensuring the person's smooth and timely transition to local authority support when they reach the cap. For that reason, when a person is expected to reach the cap within 18 months of a statement being issued, that statement must include an indication of the date at which the person is expected to reach the cap. It should also clearly set out the steps for transition, including what action, if any, they need to take.
- 3.27 Where it is appropriate to do so, for example where a person is progressing towards the cap at a relatively fast rate, the local authority may also consider including an indication of when a person might reach the cap in earlier statements to support the person in their financial planning. Whenever an indication is given of the date a person might be expected to reach the cap, an explanation should be given to ensure the person is able to understand how the date was arrived at and that it is an estimate only. It is likely that a simple approach, such as assuming that the person's care and support needs continue at the same level, would be most simple to explain.
- 3.28 The care account statement also provides an opportunity to make people aware of the different types of financial information and advice that are available to support them to use the information in their statement to plan for future care costs (see chapter 3 'Information and advice' in the CASS guidance). Before providing financial information or advice directly to a person the local authority should establish whether the person has a deputy of the Court of Protection or a person with Lasting Power of Attorney acting on their behalf (see paragraph 3.42 in the CASS guidance).

## **Adjustments to accrued costs**

- 3.29 The act makes provisions for the level of the cap to be adjusted. Further detail on how the cap may be adjusted is set out in chapter 1 of this document

(paragraphs 1.78 – 1.80). The care account statement provides an opportunity to inform people of any changes to the level of the cap and how it affects them. The statements must therefore clearly set out whether and how the cap has been adjusted since the last statement and what effect that has on the person's accrued costs. For clarity, only adjustments which have been made in the period since the last statement should be shown.

- 3.30 There are other exceptional circumstances in which the local authority may adjust a person's accrued costs, as recorded in their care account. Adjustments should only be made where costs have incorrectly accrued towards the cap and are not in keeping with the requirements of the Act, for example:
- administrative error (for example, where the information has been recorded incorrectly)
  - the person has chosen not to meet their eligible care and support needs
  - the person has had their needs met by a carer, as defined by the Act
  - the person has had their care and support needs provided under other pieces of legislation (for example, continuing healthcare, care provided in hospital under NHS Act 2006, free care provided under section 117 of the Mental Health Act)
- 3.31 The local authority should not retrospectively adjust accrued costs as recorded in a care account in any other instance, including where the amount that the person is spending on their care costs does not match the values contained in an independent personal budget.
- 3.32 Where any adjustment is made to the person's accrued costs the care account statement should provide a clear explanation of why and how the adjustment has been made and how the person can raise any queries they may have.
- 3.33 From time to time, the person's circumstances may change. This might include, for example: a change in the level of their care and support needs; in the setting in which they receive care and support; or in their financial circumstances. The care account statement should set out what responsibilities the person has to inform the local authority of any changes in their circumstances to help ensure that any changes are recorded, and where necessary reflected in the care account, in a timely fashion. This will also help local authorities to ensure that a person's care and support plan or their independent personal budget is kept under review and revised as appropriate to reflect any changes in the person's eligible needs or financial circumstances.

- 3.34 The local authority should also give an indication in the care account statement of when it would expect to review a person's needs and/or finances. This may be particularly relevant if a person has a deferred payment agreement and is approaching the limit of equity in their chosen form of security (see chapter 9 'Deferred payment agreements' in the CASS guidance).
- 3.35 When a local authority becomes aware of changes in a person's circumstances, either from the person or through review and verification processes (more information on this can be found in chapter 2 'Independent personal budgets, paragraphs 2.50-2.62 of this document), it should consider whether the person should not have accrued costs during this period and may consider whether to reflect this in the care account by adjusting the accrued costs. Relevant changes in circumstances might include, for example, if a person has had a long stay in hospital or received free reablement services, or begun to qualify for continuing healthcare.
- 3.36 The local authority may decide not to make changes to a care account for short periods of changes to circumstances but should establish a policy setting out how it will decide when adjustments to accrued costs are appropriate. In doing so, it should consider:
- contractual obligations
  - any potential impact on the person's wellbeing
  - the administrative burden associated with making adjustments, and whether it may not be cost effective to make the change. Adjustments should only be made where it is proportionate to do so.
  - the time that has passed since the change in circumstances. For example, it may not be proportionate to consider a period of change in circumstances that happened over a year ago
- 3.37 A person may alert the local authority that the level of their care and support needs have changed and as such request that the local authority undertakes a new needs assessment. There may be occasions where there is a delay in the local authority completing a needs assessment, and in the meantime the person may have altered their care package to meet their eligible care and support needs. If the local authority subsequently agrees with the person that the level of eligible care needs has changed, then the local authority should take steps to adjust the person's accrued costs. Adjustments to the person's care account should be made from the point at which they altered their

package of care and support. The local authority may want to request proof of when the person's new package of care began.

- 3.38 Adjustments must be made to reflect the amount it would have cost the local authority to meet the needs.

## **Providing wider information**

- 3.39 Although the primary purpose of the care account statement is to provide information on a person's progress towards the cap, it also affords an opportunity to provide wider information relevant to the person's care and support. In particular, it provides a means to help the person better understand what they are responsible for paying in relation to their care costs. For example, where a statement is prepared for someone receiving local authority support, it may be helpful to include similar information as is set out in the personal budget. This might include information on the level of the local authority contribution to the costs accrued; any other amounts of public money the person is receiving; or information regarding any top-up payments a person (or a third party on their behalf) has chosen to make. Local authorities may also wish to combine the person's care account statement with a deferred payment statement. However, the local authority should consider how best to present any wider information, so that the person is able to clearly distinguish what costs do and do not count towards the cap.
- 3.40 Providing wider information and signposting to independent sources of financial information and advice (see chapter 3 'Information and advice' in the CASS guidance) could help the person to better plan and prepare for their ongoing costs and to take account of when they may be eligible for local authority support or may reach the cap.
- 3.41 Providing care accounts also offers an opportunity to provide access to wider information relevant to that person's care and support. For example, it may provide an opportunity to make people aware of services that may help them to prevent, delay, or reduce development of their needs. Providing online access to care accounts may provide an opportunity to allow people to access wider information relevant to their own care and support via the same secure online service.

## Retention of care accounts

- 3.42 Where a local authority has been keeping a care account for a person but is no longer required to do so, for example because the person no longer has eligible needs, the local authority must retain the care account either for 99 years from the last day the account was updated or until the local authority becomes aware that the person has passed away.
- 3.43 After the person's death it is still possible that disputes could arise relating to the costs recorded in the care account. Therefore, in determining their local retention policy local authorities should have regard to the need to allow sufficient time to resolve such disputes as well as their duties under the Data Protection Act and common law. The local authority should consider a retention policy of up to 7 years following a person's death. If a dispute arises relating to a care account, that account should be retained until the dispute is resolved.

## Portability of care accounts

- 3.44 People may choose to move across local authority boundaries for many reasons such as to be closer to family or simply because they live in a boundary area. Where a person has a care account with one English local authority and they notify another English local authority that they intend to move to their area, the second local authority will need to be satisfied that the person's intention to move is genuine and communicate this to the first local authority. The first local authority must then provide the second local authority with a copy of the person's care account. At a minimum, the first local authority should provide an up-to-date care account statement and a copy of the care account's update history from the previous year, along with any other historical information about the person's care account the second local authority requests (providing this information is required to be recorded in a care account). Should an individual wish to challenge a decision made with respect to their care account by their previous local authority, their new local authority should signpost the individual to the previous local authority, who will still retain their previous care account data.
- 3.45 The first local authority will also need to provide a copy of any care and support plan prepared for the person or, if they are a self-funder, a copy of their independent personal budget and their most recent needs assessment. The second local authority must then assess the person's needs, prepare a care and support plan where applicable and determine what it would cost them to meet the person's eligible needs. The person will continue to progress



towards the cap at the rate of the personal budget or independent personal budget set by the first local authority until the second local authority calculates a new personal budget or independent personal budget. More detailed guidance can be found at chapter 20 'Continuity of care' in the CASS guidance.

## Case studies

3.46 The following section provides case study examples of what would happen following a change in a person's circumstances.

### Case study: 9 a self-funder moving from domiciliary care to residential care

Yun is 67 years old and has rheumatoid arthritis. She contacts her local authority for a needs assessment and to register for the cap.

She lives alone in the house she owns, worth £290,000, but benefits from a property disregard if she receives her care at home, meaning she may qualify for local authority financial support. She also has a pension income of £300 per week, and £10,000 in savings.

Following a care and support planning process, the local authority and Yun agree that her needs would be best met at home. The local authority commissions a paid care worker to come to her home for 10 hours per week at £200 per week. Yun then meters towards the cap at £105 per week, the amount the local authority charges Yun to meet her needs and set out in a personal budget. The local authority contributes the remaining £95 per week.

Counts towards the cap	Does not count towards the cap
Contribution towards care costs paid by Yun: £105 per week	Means-tested contribution from local authority: £95 per week

After 7 years, Yun has a stroke which greatly affects her ability to live safely at home. Her family, who now have power of attorney, contact her local authority to request a review of her needs. Yun's family and the local authority agree that Yun's needs are now best met in a care home.

Yun's family wish to choose a care home for Yun themselves. After the initial 12 week housing disregard period has passed, Yun's home is now included in the financial

assessment, and so her assets are above the upper capital limit of £100,000. Therefore, the local authority provides her with an independent personal budget. This sets out that if the local authority was meeting Yun's needs, it would cost £800 per week (including daily living costs at £212). Yun's family choose a care home which costs £900 per week, and she meets the full cost. From this point, she progresses towards the cap at £588 per week.

<b>Counts towards the cap</b>	<b>Does not count towards the cap</b>	<b>Does not count towards the cap</b>
Contribution towards care costs paid by Yun: £588 per week	Daily living costs deducted from the cost of care: £212 per week	Cost for preferred care home accommodation that is over and above what the local authority would pay: £100 per week

### **Assumptions**

Daily living costs will be set at the equivalent of £200 a week in 2021 to 2022 prices. For illustrative purposes the case studies assume £212 for daily living costs in all years (although this is subject to change). Personal expenses allowance in 2022 to 2023 prices at £25.65 per week.

### **Case study 10: a self-funder in domiciliary care with a break in care of more than 6 weeks**

Simran is 40 years old and has been assessed as having eligible care and support needs that would be best met in her own home. Simran has savings of £40,000, therefore her local authority provides her a personal budget that sets out that she draws on 7 hours of home care per week at a cost of £140. However, Simran has a weekly income of £320 which means she has enough income and savings to cover the total cost of her care. Simran wants to remain as independent as possible and therefore chooses to arrange her own care.

Simran's family are taking her on an extended 10-week stay abroad during which her family will meet her eligible care and support needs. Simran contacts her care provider to inform them that she will not be requiring care for the next 10 weeks. She also alerts the local authority of these plans and lets them know that she won't be requiring care for the 10-week period. Upon Simran's return, the local authority adjusts her care account to subtract the £1400 which would have been accrued in those 10 weeks.

### **Assumption**

Minimum Income Guarantee for under 65s in 2022 to 2023 prices at £91.40 per week.

# Consequential amendments to the CASS guidance

Summary of anticipated consequential amendments to the Care and support statutory (CASS) guidance issued in July 2022 to reflect the 2023 charging reforms.

## Chapter 3

### Information and advice

Paragraph number	Update
Paragraphs 3.41 (Understanding Care Charges)	Update the final bullet to reflect the introduction of the cap from October 2023.

## Chapter 4

### Market shaping and commissioning of adult care and support

Paragraph number	Update
Paragraph 4.75(Understanding the market):	Update reference to self-funders who are likely to move to local authority support in the future to include those projected to reach the cap. Update reference to people who are partly local authority-funded to include those who are likely to reach the cap.

## Chapter 8

### Charging and financial assessment

Paragraph number	Update
Preamble	'This chapter covers': Add bullet point on meeting eligible needs when the cap has been reached.
Paragraph 8.2	Add reference to the local authority being required to meet a person's needs when the cap on care costs is reached.
Paragraph 8.11	Update to refer to "...local authority financial support..."
Paragraph 8.12	Update to replace £14,250 with £20,000 and £23,250 with £100,000.
Paragraph 8.13	After the text 'Where the person's needs are to be met by care in a care home' remove the remainder of the sentence and add the following text ' the local authority will have a duty to meet the self-funder's needs if the person is not, and has not been, in residential care in the 6 months preceding October 2023 (unless this

Paragraph number	Update
	residential care was paid for by the NHS, or purchased by the individual on a temporary basis, for example respite care). This condition, will be removed after no more than 18 months (April 2025).
Paragraph 8.13	<p>Change ‘may pay the full cost of their care and support’ to ‘may be charged the full cost of their care and support’.</p> <p>After the text ‘may pay the full cost of their care and support until their capital falls below the upper capital limit’ add the following text: ‘or the cap on care costs is reached’.</p>
Paragraph 8.20	Update to replace £14,250 with £20,000 and £23,250 with £100,000.
Para 8.37	Update to remove the reference to top-ups being available to first parties only “in certain circumstances” to reflect the new first party top-up arrangements.
Paragraph 8.38	Update to refer to the new statutory guidance chapter on cap on care costs.
After paragraph 8.48	Insert new title “Where the cap on care costs is reached” and a paragraph to reflect that when a person reaches the cap the local authority must meet their eligible care and support needs as set out in their personal budget; that a person in a care home remains responsible for paying their daily living costs; that if such a person is unable to meet daily living costs from their income and assets they are entitled to means-tested support from the local authority; that in such circumstances, the local authority must make a financial assessment of how much the person can afford to pay towards their daily living costs using the charging and assessment of resources regulations. The paragraph should also include a reference to the new chapter on Cap on care costs
Paragraph 8.56	<p>Remove: ‘Where the person asks the local authority to meet their eligible needs, and it is anticipated that their needs will be met by a care home placement, then the local authority may choose to meet their needs, but is not required to do so. In other cases, where the needs are to be met by care and support of some other type, the local authority must meet those eligible needs.’</p> <p>Insert ‘Where the person asks the local authority to meet their eligible needs, and where the person is not, and has not been, in residential care in the 6 months</p>

Paragraph number	Update
	preceding October 2023, the local authority must meet those eligible needs'
Paragraph 8.57	Remove: 'They should also be clear that this right does not extend to needs met by a care home placement, although local authorities may choose to apply the same approach locally'
Paragraph 8.59	Remove: 'who requires a care home placement'  Insert: 'who was already in residential care in October 2023, or had been in residential care in the 6 months preceding October 2023'
Paragraph 8.63	Remove: 'their needs are to be met by care and support other than in a care home'  Insert: 'when the person is not, and has not been, in residential care in the 6 months preceding October 2023'
Paragraphs 8.65 to 8.67	Delete. Section on 'pension reforms' no longer needed.

## Chapter 9

### Deferred payment agreements

Paragraph number	Update
Paragraph 9.1 (definition of terms)	Make clear that people can defer daily living costs and insert definitions for 'daily living costs' and 'cap on care costs' (subsequent paragraphs need renumbering).
Paragraph 9.7(c) (Criteria governing eligibility for deferred payment agreements)	Update to reflect the change in the upper capital limit from £23,250 to £100,000 for means-tested support.
Paragraph 9.8(b), last line	Amend paragraph to reflect position where someone might like to use wealth tied up in their home to fund more than just their core care costs either before or after the cap has been reached. For instance, purchasing affordable top-ups or funding daily living costs once they have reached the cap.
Paragraph 9.8(d)	Update to reflect the change in the upper capital limit from £23,250 to £100,000 for means-tested support.
Paragraph 9.30 (Information and advice)	Add additional bullet point to say the deferred payment agreements (DPA) will cover care costs based on information in the person's personal budget or IPB. After the cap is reached, a DPA in existence can be used to cover other costs which a person is still liable to pay, that is, daily living costs and affordable top-ups.

<b>Paragraph number</b>	<b>Update</b>
Paragraph 9.36 (How much can be deferred)	Update paragraph to: In principle, a person should be able to defer the entirety of their care costs up to the cap as will be set out in a personal budget or IPB, including daily living costs and any top-ups; subject to any contribution the local authority is allowed to require from the person's income.
Paragraph 9.38 (How much can be deferred?)	Update (b) and (c): instead of referring to 'care costs', this needs to be 'overall costs' (to be inclusive of care, daily living costs and any other costs agreed with the local authority).
Paragraph 9.42: (Equity limit)	Change; "£14,250 (for financial year 2015 to 2016, this is in line with the lower capital limit)" to; "£20,000 (for financial year 2023 to 2024, this is in line with the lower capital limit).'
Case study 3	Replace £14,250 with £20,000. The calculation should be amended to: £165,000 minus £16,500 minus £20,000 equals £128,500. The text summary showing 'equity limit' for the total amount she could defer would consequently be £128,500 which would leave £36,500 in equity in her home.
Paragraph 9.47	Instead of a reference to 'care costs', this needs to be 'overall costs' (to be inclusive of care, daily living costs and any agreed top-ups)
Case study 4	Update to reflect more realistic care and support charges in 2023.
Paragraph 9.52 (Care costs)	To reflect metering, the following text needs to be reviewed 'local authority should have a rough idea of their likely care costs as a result of the care planning process.' Edits required to reflect that local authorities should review care accounts to assess a person's progress towards the cap, and where relevant daily living costs that they are responsible for and any agreed top-ups to enable local authorities to work out the full cost of the care package which is to be factored into a DPA.
Paragraph 9.53 (Care costs)	To reflect metering, the following text should be amended: 'people should be able to defer their full care costs including any agreed top-ups and daily living costs
Paragraph 9.55 (Sustainability)	Revise this text in relation to what their equity could cover to reflect introduction of the cap, 'given their projected care costs, and how their care costs might change over time.' (See paragraph 9.53 on what needs to be included).
Paragraph 9.56	Amend sentence to read ' Local authorities and individuals should also consider the length of time that a person's intended contribution to care costs, based on information held in a personal budget, if they intend to contribute to their care costs from their savings.

<b>Paragraph number</b>	<b>Update</b>
Case study 5	Update to reflect numbers set out in case study 3
Paragraph 9.81 (Making the agreement)	Add additional point to read 'k) Explanation of the cap on care costs, and the impact a DPA would have on a person's progress towards it. When the cap has been reached, the DPA can be used to cover elements of care costs such as first-party top ups and DLCs before and after reaching the cap'
Paragraph 9.82(b)	Update to a term to make clear that the purpose of the loan is to pay for costs of care and support, including daily living costs or top-ups whilst living in a care home or supported living accommodation.
Paragraph 9.83	For 1 a) add in a point about 'including amounts accrued toward the cap on care'. Add in point (k) 'when notice (12 months) will be provided indicating the person is close to reaching the cap and therefore becomes eligible for local authority support'.
Paragraph 9.89 (The local authority's responsibilities while the agreement is in place)	Reflect that local authorities should consider where possible combining care account statements with deferred payment statements.
General	Add reference to what happens to DPAs when people reach the cap. Clarify interaction between disposable income allowance and personal expenses allowance further to the extension to means-tested support.

## Chapter 10

### Care and support planning

<b>Paragraph number</b>	<b>Update</b>
After Paragraph 10.9 (When to undertake care and support planning, and support planning)	Add paragraph to reflect that where a person who had been arranging their own care and support reaches the cap on care costs, the local authority becomes responsible for meeting their eligible needs; that a care and support plan must be developed and that a needs and financial assessment may also be required. Note that person may choose to continue to meet their own needs
Paragraph 10.16	Remove 'and the local authority has agreed to do so'. Replace with: 'and the local authority has a duty to do so'.
Case study between 10.18 and 10.19	Update to remove reference to discretionary powers. Chapter on the cap on care costs should follow this chapter and should be renumbered to 'Chapter 11. Cap on care costs'.

# Chapter 11

## Personal budgets

Paragraph number	Update
Paragraphs 11.2, 11.3, 11.7	Update to reflect the costs of care package are to be set out in a personal budget and explanation that what a person is charged to contribute towards these is costs is what counts towards the cap
After paragraph 11.9	Add a new paragraph (11.10) to reflect that a personal budget must be prepared as part of a care and support plan for an individual who has been meeting their own needs and reaches the cap on care costs; that the transition may also require a needs assessment and financial assessment and that local authorities should begin planning with the individual before the cap is reached. The paragraph will also reflect the need to ensure that a person's needs continue to be met (should the individual at this point want the local authority to meet their needs) in a manner consistent with the person's views; that a person may prefer to carry on organising their own care and support, with minimal input from the local authority and that a direct payment could be the most beneficial way for a local authority to meet a person's eligible needs on reaching the cap and allowing the person to continue to meet their needs in an independent manner (provided the direct payment conditions are met).
After paragraph 11.11	A new paragraph (11.12) to reflect that where a local authority is meeting needs in a manner that includes daily living costs (for example for people receiving care in a care home setting), the personal budget amount must be broken down to show the current total cost to the local authority (irrespective of any administrative arrangements with providers and so on), how much of that the cost the adult is charged to pay, and the balance of the cost to the local authority. Where eligible needs are being met, the personal budget must also say the current cost to the local authority of meeting the person's eligible needs, how much the adult has to pay, and where the cost to the local authority of meeting the eligible needs includes the amount attributable to daily living costs (set down in regulations), the amount attributable to those daily living costs. Only the amount specified as the individual's personal contribution towards their eligible needs counts towards the cap, less daily living costs.
Paragraph 11.13	From 'this fee is not part of the personal budget' to the end of that sentence, revise wording for clarity and to



<b>Paragraph number</b>	<b>Update</b>
	make explicit that this fee does not count towards the cap.
Paragraph 11.30	Revise wording concerning how a direct payment is one of the ways a personal budget can be 'deployed' Update to reflect that personal budgets are statements but the relevant funding can be deployed in different ways.

## **Chapter 12**

### **Direct payments**

<b>Paragraph number</b>	<b>Update</b>
Paragraphs 12.41, 12.42, 12.43, 12.44, 12.45	To be deleted to reflect that the use of direct payments will be extended to residential care.
Paragraph 12.47	Update to reflect that the use of direct payments will be extended to secure stays in residential care. Paragraph to reflect that this is to coincide with the introduction of the cap and allow people that reach the cap, or reach the upper capital limit to maintain existing contracts and give them and their families the ability to continue to manage their own money.

## **Chapter 16**

### **Transition to adult care and support**

<b>Paragraph number</b>	<b>Update</b>
Paragraph 16.52	Update to remove reference to free care for those who turn 18 with eligible care and support needs and reflect that local authority should explain that once 18, an individual will begin to progress towards the cap.

## **Chapter 20**

### **Continuity of care**

<b>Paragraph number</b>	<b>Update</b>
Paragraph 20.20 (Preparing for the move)	Update bullet points to indicate that the first local authority must provide the second local authority with a copy of any IPB prepared in respect of the person and a copy of any care account they have been keeping in respect of the person.

## Annex B: treatment of capital

Paragraph number	Update
Before Paragraph 1	Insert new paragraph indicating that where a person has reached the cap, the local authority may not charge them for meeting their care and support needs under section 18 other than daily living costs (if applicable).
Paragraph 2	Update to refer to the guidance chapter on the cap on care costs.
Paragraphs 3, 16 (Calculating the value of capital) and 24 (Capital limits or upper and lower capital limits)	Update to reflect the new £100,000 UCL and the £20,000 lower capital limit (LCL) for means-tested support.
Paragraph 27 case study (Tariff income)	Update case study to reflect new capital limits.
Below Paragraph 31 (Notional capital) – Example of diminishing notional capital	Update to reflect the new upper capital limits for means-tested support
Case study below Paragraph 33 (Capital disregarded) – Example of disregarded capital	Update to reflect the new lower capital limit for means-tested support

## Annex C: treatment of income

Paragraph number	Update
Paragraph 1	Update to indicate that where a person has reached the cap, the local authority may not charge them for meeting their care and support needs under section 18, other than DLCs, which a person in a care home will be responsible for and for which a local authority may charge against the person's income subject to a financial assessment.

## Annex F: temporary residents in care homes

Paragraph number	Update
Before Paragraph 2	Insert a new paragraph indicating that where a person has reached the cap, the local authority may not charge them for meeting their care and support needs under section 18, other than DLCs, which a person in a care home will be responsible for and for which a local

	authority may charge against the person’s income and assets subject to a financial assessment.
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## Annex I: repeals and revocations

Paragraph number	Update
	Rename 'Repeals, revocations and amendments' Provide details of the Care and Support (cap on care costs and so on.) Regulations and the amendments they make to the Charging Regulations and Choice of Accommodation Regulations in implementing the 2023 reforms.

## General amendments

Update whole guidance to reflect changes made to CCGs (which will be replaced by ICBs) in the Health and Care Act.

Update chapter and paragraph numbers to reflect insertion of new chapters – ‘Cap on care costs’, ‘Independent Personal Budgets’ and ‘Care Accounts’.

Update the index and references within the guidance to reflect insertion of new chapters and paragraphs.

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