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## 2 What is deliberate deprivation of assets?

Deliberate deprivation of assets means you have intentionally decreased your overall assets, in order to reduce the amount you contribute towards the cost of care services provided by the local authority.

The local authority must show that you knew you may need care and support in the future when you carried out this action. It is therefore an evidence-based test of both foreseeability and intention.

Inheritance Tax gifting rules do not apply to social care. Any past disposal of assets can be considered as possible deprivation.

### Other reasons for deprivation of assets

Annex E of the guidance states that deliberate deprivation should not be automatically assumed because *someone no longer has an asset and a local authority should ensure it*

For example, if you pay off a debt that is not immediately due, this must not be considered as deprivation. This is why a local authority must consider explanations and any supporting evidence in each case before it makes its decision.

## 3 Deprivation and the financial assessment

A local authority can choose whether to charge you for services to meet your assessed needs under the Act. They may provide services in your own home or elsewhere such as a day centre, or you may need to live in a care home or supported accommodation such as sheltered housing.

If a local authority arrangeple











## 7.2.2 Notional income and pensions freedoms

Similarly, you may be treated as having notional income. It can include income:

available on application but you have not applied for it

that is due but you have not received it

you have deliberately deprived yourself of for the purpose of reducing the amount you must pay for care services.

In all cases, the local authority must satisfy itself the income would, or should, have been available to you. Notional income should be treated like other income, meaning there may be circumstances where it must be disregarded.

Notional income should be calculated from the date it could be expected to be acquired if an application was made. The guidance states that when doing this *a local authority should assume the application was made when it first became aware of the possibility and take account of any time limits which m*

In April 2015, flexibility about how you can access defined contribution pensions was introduced, including letting you access your full pension pot as a lump sum. Notional income can be applied if you reach State Pension age and have a pension pot but have not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available.

When applying notional income to a pension pot, the guidance advises local authorities to calculate this

## 7.3 Recovering charges from a third-party

If you



## **Local authority options to recover debt**

A local authority can start County Court proceedings to recover debts if you do not pay or misrepresent information relevant to your financial assessment. This can result in having a legal charge placed on your property, which ensures they receive the outstanding funds when it is sold.

However, a local authority should only use th

In deciding how to recover a debt, the local authority should consider all the circumstances of the case before deciding a course of action. For example, was it deliberate avoidance of payment or due to circumstances beyond your control? This could be because you have developed cognitive difficulties leading to a lack of mental capacity.

The authority should concentrate on how to avoid you getting into debt in the first place. For example, by giving you a clear explanation and written information on your responsibilities for

## 10 Challenging local authority deprivation decisions

If you disagree with a decision by the local authority about deprivation of assets, you can challenge this using the formal complaints procedure.

Referencing this factsheet, remind the local authority they must show you were **significantly motivated by avoiding care costs**, that when the asset was disposed of, you had a **reasonable expectation of the need for care and support**, and a **reasonable expectation of the need to contribute towards the cost** of meeting those needs.

The local authority must base its decision on the facts of your individual case and consider all relevant circumstances. It should allow you to submit relevant evidence in support of your account.

They must avoid setting blanket policies stating that particular forms of spending, for example purchasing a funeral plan or a high-cost care package, will automatically be treated as deliberate deprivation.

If you believe that the disposal of assets took place at a time when you could not have reasonably expected having needs for care and support, explain the reasons for this. Refer to any evidence you have, for example bank statements showing you spent money before you had needs for care and support. You can point out that deliberate deprivation cannot be found if the disposal took place when you were fit and healthy and could not have foreseen needing care and support.

If you dispose of assets at a time when you have care and support needs, for example when receiving care services, the local authority should not automatically assume that deliberate deprivation has occurred. They must be able to show that you were also significantly motivated by avoiding care costs.

Be clear and specific as you can about your motives, explaining any reasons why the disposal of assets in question was unconnected with avoiding care costs.

If you are not satisfied with the outcome of your complaint, you can take it to the Local Government and Social Care Ombudsman. For information see factsheet 59, *How to resolve problems and complain about social care*.

### Ombudsman guidance

In a complaint, you may find it helpful to refer to guidance published by the Ombudsman, *Deprivation of Capital: guidance for adult social care practitioners*.

This gives examples where the Ombudsman has found local authorities at fault when making decisions about deliberate deprivation of capital. For example, by treating all gifts as deliberate deprivation, as well as setting out good practice for local authorities.









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The evidence sources used to create this factsheet