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## Adult Social Care – Deprivation of Assets



[Care Act 2014](#)

[The Care and Support \(Charging and Assessment of Resources\) Regulations 2014](#)

[Care and Support Statutory Guidance](#)

[Charging – Chapter 8](#)

[Annex B – Treatment of Capital](#)

[Annex C – Treatment of Income](#)

[Annex E - Deprivation of Assets](#)



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## What is meant by deprivation of assets?

### DEPRIVATION OF ASSETS?

Deprivation of assets means where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. ([Annex E](#))



A person can deprive themselves of capital in many ways. However, this will not be deliberate in all cases.



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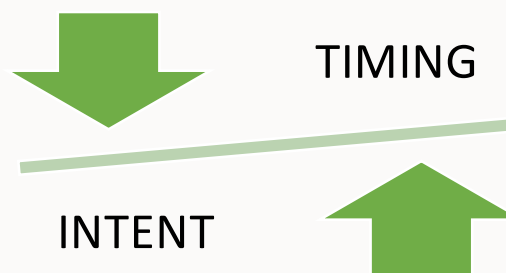
## DEPRIVATION?

Questions of deprivation should only be considered where the person's assets, if they still had them, would have been taken into account for the purposes of the financial assessment or has turned the asset into one that is now disregarded



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

- (a) whether avoiding the care and support charge was a **significant motivation in the timing** of the disposal of the asset; at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?
- (b) did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?





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Where this has been done to remove a debt that would otherwise remain, even if that is not immediately due, this must not be considered as deprivation.

**Notional Capital** - In some circumstances a person may be treated as possessing a **capital** asset even where they do not actually possess it. This is called notional capital. [Annex E](#) (32)

**Notional income** - In some circumstances a person may be treated as having **income** that they do not actually have. This is known as notional income. This might include for example income that would be available on application but has not been applied for, income that is due but has not been received or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care. [Annex E](#) (34)



*“My client gifted her property to her two daughters several years ago following the death of her Husband. She was fit and well at the time but now needs care and has been asked to complete a Local Authority financial assessment form. Will the Local Authority consider her to have deliberately deprived herself of the asset”?*

- 1) While she is living at home the property is disregarded from the Local Authority financial assessment. [See Annex B Capital Disregards](#)
- 2) If not otherwise disregarded consider whether there was significant motivation in the timing of the disposal of the asset. [See Annex E – Deprivation of Asset](#)



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## CHALLENGING A DECISION



**Challenging a decision** that was ‘so unreasonable or irrational that no reasonable person acting reasonably could have made it’ (known as ‘Wednesbury unreasonable’ – Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB233).

Each Local Authority must have a complaints procedure and if unable to get a satisfactory resolve the [Local Government Ombudsman](#) may investigate.

The **Local Government Ombudsman** is the final stage for complaints about councils, all adult social care providers (including care homes and home care agencies) and some other organisations providing local public services. A free service, they investigate complaints in a fair and independent way and make recommendations for a resolution.

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## **LGO – Charging/Deliberate Deprivation Decisions**

### [East Sussex County Council \(18 000 465\)](#)

Summary: Mrs X received care and support for 9 years, she moved into Sheltered accommodation, paid off an Equity Release and gifted the remainder to Mr P.

**The LGO found no evidence that the Council was at fault in the way it considered Mrs X could fund her own care through the capital left from the sale of her home.**

### [Dorset County Council \(17 016 802\)](#)

Summary: Mr X and his adult son complained that the Council has wrongly decided that Mr X gave away £226'000 savings to avoid paying care fees. Summary: There is no evidence of fault in the way the Council considered the financial assessment for the late Mrs X. The complaint is not upheld.

**There LGO found no fault in how the Council made its decision: it took all the relevant factors into account and followed the law, government guidance and its own policy.**

### [South Gloucestershire Council \(17 013 122\)](#)

An important decision as The Council said it considered that, because Mr C had been awarded the higher rate of Attendance Allowance, he was aware he would require a package of care

### [Northamptonshire County Council \(17 015 742\)](#)

Summary: Mrs A complains that the Council charged the late Mrs X too much for her care home fees as it would not accept the renovation costs incurred in selling Mrs X's house.

**The LGO found no evidence of fault in the way the Council considered the financial assessment for the late Mrs X. The complaint is not upheld.**

### [Leeds City Council \(17 015 035\)](#)

Summary: Mr C complains the Council wrongly decided she had deprived herself of capital by transferring property to a trust and was therefore liable for her care home fees.

**The Ombudsman found no fault with the Council's decision-making in this case.**



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## Deliberate Deprivation – DWP BENEFITS

### [State Pension Credit Regulations 2002](#)

21. (1) ***A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit except to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 22 (diminishing notional capital rule).***

21. (2) *A person who disposes of a capital resource for the purpose of–*

*(a) **reducing or paying a debt** owed by the claimant; or*

*(b) **purchasing goods or services if the expenditure was reasonable** in the circumstances of the claimant's case, shall be regarded as not depriving himself of it."*

### [IS Regulations 1987 - 51](#)

### [Facts which DMs should consider - 84806](#)

## Benefit Case Law

### [IS/PC Case Law](#)

R(SB) 12/91 a claimant cannot be caught by the deprivation of capital rules unless they had knowledge of the capital limits.

R(IS)13/94 – Claimant bought a council house which brought her capital below limit and Judge Dr Rice set aside the decision as the Tribunal failed to *regulation 51(1) "the intention to secure income support need not have been the primary motive; it was enough if it was **a significant object**"*



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CIS/124/1990 held that it must be proved that a person actually knew of the capital limit rule, otherwise the necessary deliberate intention to obtain benefit could not have been present. It is not enough that the person ought to have known of the rule  
CIS/109/1994 where the claimant who was in a nursing home had largely followed her son's advice about what was best for her when it came to decisions about her capital. She bought an Annuity and DWP claimed deliberate deprivation – not upheld  
“We are satisfied that it was not a **significant operative purpose** of the purchase of the annuity by [the claimant] that she should obtain income support or increased income support”.