

Worcestershire County Council Deprivation of Assets Policy

(Relating to Financial Assessments and Care
Contribution charging policy)

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1. Policy Statement

This policy aims to support the Financial Assessment process, making charging fair and consistent for all service users in accordance with guidelines set out by Central Government. The Council must comply with the Department of Health's Care and Support Statutory Guidance, issued under the Care Act 2014, ensuring that there is equitable charging, taking into consideration a person's assets; this may be both their capital and income.

When undertaking a Financial Assessment, the Council may identify circumstances that could suggest a person may have deliberately deprived themselves of assets to reduce the level of contribution they make towards their care and support, or secure assistance in paying for their care and support from Worcestershire County Council.

Where the Council considers that deliberate deprivation may have occurred, the Council will have regard to this policy, which is written in accordance with Annex E of the Department of Health Care and Support Statutory Guidance, issued under the Care Act 2014.

To see the Government Guidance please visit:

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

In this policy the following references apply:

- 'the person' and 'you' refer to the person receiving the care and support from Worcestershire County Council
- 'we' and 'the Council' refer to Worcestershire County Council.

2. What is Deliberate Deprivation?

Deliberate deprivation is where the person has *intentionally* reduced their overall assets in order to pay less towards their care and support needs, or to secure assistance in paying for their care and support from the Council.

The person, or their legally appointed representative, must have been aware that care and support would be required either imminently, or at some point in the future, and the person's level of assets would affect their contribution towards the care and support.

Social Care, unlike Health Care, is not free and it is important that people pay their contribution towards their care or support costs. These contributions are key to the overall affordability of the Care and Support system. Therefore, the Council will make necessary enquiries to ensure that people are not rewarded for trying to avoid paying their assessed contribution.

People should be treated with dignity and respect and be able to spend the money they have saved as they wish. The Council will not automatically assume that deprivation has occurred because there may be valid reasons why someone no longer has an asset. The Council will explore the reasons first and, so that the Council can make an informed decision as to whether deliberate deprivation has occurred, it is up to the person, or their legal representative, to prove they no longer have the asset and to provide the Council with information and evidence as to why they no longer have it.

The term 'deliberate deprivation' covers a broad range of ways in which the owner of an asset might transfer it out of their possession. The following are some examples are where the Council may explore whether deliberate deprivation has occurred:

- a lump-sum payment such as a gift, or to pay off a debt
- transferring the title deeds of a property to someone else
- putting money into a trust that cannot be revoked
- converting money into another form that has to be disregarded from the means test, e.g. personal possessions, investment bonds with life insurance
- reducing capital through substantial expenditure on items such as expensive holidays or extravagant living.

Other courses of action, such as selling an asset for less than its true value, may also be seen as deprivation.

3. Has deprivation of assets occurred?

There may be many reasons for a person depriving themselves of an asset, the Council will consider the following before deciding whether deliberate deprivation to avoid care and support charges has occurred:

- a) The timing of the disposal of the asset. At the point the asset was disposed of, could the person have reasonable expectations of the need for care and support?
- b) Did the person have reasonable expectations of the need to contribute towards the cost of their eligible care and support needs?
- c) How did the person requiring care and support expect the cost of this care and support to be met?

4. What information and evidence will need to be supplied?

The Council need to establish the reason for the transfer or disposal of the asset, including why it was done when it was. We will look at:

- receipts or documentary evidence
- whether the transfer, or disposal, of the asset was at a time when care needs were known or being considered

- what considerations or provisions were in place to meet such care and support needs
- Whether 'gifts' were made historically and regularly.

5. What happens if it is decided that deliberate deprivation has occurred?

If a person is found to have deliberately deprived themselves of capital or income, for the purpose of the means tested Financial Assessment they can be treated as having 'notional capital' or 'notional income' to the value of the capital or income they disposed.

If the notional capital when added to their actual capital comes to more than £23,250, the Council may assess them as being able to meet the full cost of their care, even though their actual capital is less than the upper limit.

Having included notional capital in their finances, the Council will work out if, or when, the person may be eligible for help towards the cost of their care.

If the person has deprived themselves of an actual asset and converted that asset into another of a lesser value, the person will be treated as notionally possessing the difference between the value of the new asset and the one which it replaced.

6. Recovering Charges from a third party

Where the person has transferred the asset to someone else, that person, is liable to pay the Council the difference between what it would have charged and did charge the person receiving care and support. However, the person is not liable to pay any more than the benefit that they have received from the transfer.

If the person has transferred funds to more than one person, each of those people is liable to pay the Council the difference between what it would have charged, or did charge, the person in proportion to the amount they received.

As with any other debt, the Council can use the County Court process to acquire or recover debts.

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