



April 2008

Key Points:

- Replaces previous version dated April 2007
- Capital limits and other figures updated for 2008-2009.
- Supplementary sheet '*Advice note on nursing care bands*' available (Sept 2008)

Local authority charging procedures for care homes

This factsheet is aimed at people aged 60 and over.

This factsheet describes the situation in England. There are differences in the rules for funding care in a care home in Northern Ireland, Scotland and Wales. Readers in these nations should contact their respective national Age Concern offices for information specific to where they live.

Contact details for Scotland are: The Scottish Helpline for Older People – Age Concern Scotland, tel: 0845 125 9732 (local call rates) Monday to

Friday, 10am – 4pm; website: www.olderpeoplescotland.co.uk;

Age Concern Cymru are:
Age Concern Cymru, Ty John Pathy, Units 13/14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ, tel: 029 2043 1555 (national call rate); website: www.accymru.org.uk;

Age Concern Northern Ireland can be contacted at: 3 Lower Crescent, Belfast BT7 1NR, tel: 028 9032 5055 (national call rate), Monday – Friday, 10am – 12pm and 2pm - 4pm, website: www.ageconcernni.org

Content

1. Using the factsheet.....	3
2. Non-means tested assistance with care home costs.....	4
3. How to obtain help from the local authority	7
4. The means-test	9
5. Permanent residents	11
5.1 Your capital.....	11
5.2 Treatment of your former home	13
5.3 Your income.....	16
5.4 The means-test calculations.....	23
6. Temporary residents	25
6.1 When temporary care becomes permanent.....	27
6.2 'Trial' periods.....	28
7. Couples	28
7.1 Couples who live in the same care home	28
7.2 One of a couple remaining in the family home - income ..	29
7.3 Liability of your spouse	30
8. Deprivation of assets	31
9. Choosing a home: third party contributions	31
10. 'Extras' in homes.....	34
11. Paying the bills; collecting benefits; acting for someone who cannot make their own decisions.....	35
12. Sorting out problems: the local authority complaints procedure; the Commission for Social Care Inspection.....	37
13. Paying for your care yourself	38
14. Further information	39
15. Further information from Age Concern.....	40

1. Using the factsheet

This factsheet provides information on the financial help which may be available from the local authority for older people needing care in a care home. The length of the factsheet reflects that the rules on charging for care homes are complicated. Where it may be useful, reference is made to legislation and case law, sometimes in footnotes.

When reference is made to the 'local authority' or 'Council' in this factsheet it means the social services department of the local council. In areas that have two tier local government, social services are provided by the county council.

Social security benefits are separate from local authority social services; the Pension Service is responsible for pensions and benefits for older people. Jobcentre Plus deals with people of working age.

If you require NHS services, your first point of contact with the NHS is likely to be a front line service such as your GP, dentist, district nurse or an NHS hospital (also called trusts). Primary Care Trusts (PCTs) are responsible for meeting the health needs of the population by arranging and commissioning services in the areas that they cover. In some areas 'Care Trusts' have been set up that commission and provide both NHS and social care services.

Contact details of local services in your area may be available in the phone book, from your local library or from a local advice agency such as the Citizens Advice Bureau.

The term 'care home' is used in this factsheet to mean any home that is registered under the Care Standards Act 2000. It includes local authority homes and independent homes, some of which provide nursing care as well as personal care.

When this factsheet refers to couples or partners, this means wives, husbands, civil partners or someone you live with as though you are a married couple or civil partners.

The information in this factsheet is correct as of April 2008. Capital limits and other figures are expected to be increased again in April 2009 but rules and figures are sometimes changed during the year.

2. Non-means tested assistance with care home costs

Most people will be expected to pay towards the costs of their accommodation and personal care in a care home from their income and capital. There are some sources of assistance that are not means tested however and that can, in some circumstances, meet the full cost of a care home.

NHS – fully funded continuing NHS health care in a care home

The NHS is responsible for meeting the full cost of care in a care home for residents whose primary need for being in care is health based. This is called NHS continuing healthcare and is often described as ‘fully funded care’.

This is a controversial area and previous legal judgements and reports by the Health Service Ombudsman have highlighted that in many areas eligibility criteria for this funding was set too narrowly and assessment procedures were inadequate. The Department of Health has issued new guidance to the NHS and local authorities regarding the assessment for NHS continuing healthcare, which was introduced in full on 1st October 2007.

It is very important to check that you have been properly assessed for ‘fully funded care’ under lawful criteria before the local authority carries out an assessment for means tested assistance.

For further details on how to check whether you have been properly assessed for NHS funding see Factsheet 20, *NHS continuing healthcare, NHS-funded nursing care and intermediate care*.

Intermediate Care. If your place in a care home has been arranged as part of a package of ‘intermediate care’, where you are having short term therapy or treatment, either following a period in hospital, or to avoid you having to go into hospital, it will be free. Such care is time limited, and not normally longer than six weeks¹.

¹ Intermediate Care HSC 2001/01: LAC (2001)1

Free ‘after-care’ services. If you have previously been detained in hospital under certain sections of the *Mental Health Act 1983*, your residential care may be provided as an ‘after-care’ service under Section 117 of this Act². Local authorities have no power to charge for after-care provided under Section 117 and this has been confirmed by the House of Lords³.

In *R v Richmond LBC and others, ex p Watson and others*, Sullivan J held that after-care provision under Section 117 does not have to continue indefinitely, although it must continue until such time as the health body and the local authority are satisfied that the individual is no longer in need of such services.⁴ In a local government ombudsman case maladministration was found where a local authority failed to properly address the question of whether an individual needed after care services and also whether these services would continue to be needed in future.⁵

Help for War Pensioners. The Veterans Agency, formerly the War Pensions Agency, can pay towards the cost of a care home providing nursing care for war pensioners in very specific circumstances. If you have a high rate of war pension and think you may need this type of care, seek advice from your War Pensions Welfare Officer. The rest of this factsheet only considers the way the local authority will apply its means-test if: your place in a home is *not* being paid for in full by the NHS; you have no funding from the Veterans Agency; and your placement has *not* been made under Section 117 of the *Mental Health Act 1983*.

NHS - funding of care provided by registered nurses in care homes.

The NHS is responsible for meeting the registered nursing costs of all residents in care homes that provide nursing care.

² Section 117 places a duty jointly on health and social services authorities to provide aftercare services for patients who have been detained in hospital under sections 3, 37, 47 or 48 of the *Mental Health Act 1983*.

³ *R v Manchester CC ex parte Stennett* [2002] UKHL 34.

⁴ *R v Richmond LBC and others, ex p Watson and others* [1992] 2 CCLR 402.

⁵ Local Government Ombudsman Report dated 19th September 1997, see [1998] 1 CCLR 546; and see also Report no 98/B/0341 from the English local government ombudsman against Wiltshire where a similar finding was made coupled with a recommendation that the cases of other people who might have had to pay for services inappropriately also be reviewed.

Nursing care is the care given by a registered nurse in providing, planning and supervising your care in a nursing home. It does not include any time spent by any other staff who may be involved in your care. Responsibility for meeting the cost of your nursing care lies with the Primary Care Trust (PCT) covering the area where you are registered with a GP. If you move to a home in a different PCT's area you will become the responsibility of that PCT when you register with a GP there.

From 1st October 2007 a single rate of £101 per week was introduced in England. Prior to this date nursing needs were assessed in one of three bands. These bands were: low band - £40 per week; medium band - £87 per week and high band - £139 per week.

From 1st October 2007 care homes receive the flat rate of £101 per week for each existing resident previously on the low or medium band.

For existing residents on the high band the NHS should continue to pay £139 per week from 1st October unless, following reassessment of your needs:

- you are found eligible for NHS continuing healthcare (the full cost of your care will then be the responsibility of the PCT);
- your nursing needs have diminished to the extent that if the old guidance relating to nursing bands were applied, you would only be eligible for either the low or medium bands (the PCT will then pay the single rate of £101 from 14 days following notification of the outcome of the reassessment);
- you no longer have nursing care needs.

If you disagree with the decision made following reassessment you can ask the PCT for a review of the decision and if necessary, an independent review.

If you entered a care home on or after 1st October 2007, it will receive a flat rate of £101 per week, regardless of the level of nursing care required. Your nursing needs will be identified as part of your comprehensive needs assessment and included in your care plan. Respite care will also attract this rate. This figure is likely to increase during the financial year 2008-2009.

The Department of Health produces a public information booklet entitled *NHS continuing healthcare and NHS-funded nursing care*. See *Further Information section for details of how to obtain this guide*.

Continence Services

The NHS is responsible for providing continence services to residents in homes providing nursing care and for meeting the cost of any continence supplies (such as continence pads) that those residents are assessed as requiring, including any equipment needed.

Community health services such as continence supplies and district nursing should be provided to residents of care homes which do *not* provide nursing care using the same criteria as for people living in their own homes.

Specialist medical equipment in care homes

In general a care home providing nursing only has to provide the equipment which is a prerequisite for its registration. Therefore, if a resident is in need of equipment which not part of the basic registration requirement, it may be argued that this 'specialist' equipment is the responsibility of the NHS or the local authority to provide.⁶

3. How to obtain help from the local authority

Whether your stay in a home is temporary or permanent, the local authority must carry out an assessment of your needs to establish that you require care in a care home before it can assist you with the cost. If you have already been assessed as needing a place in a care home, you may wish to move on to the next section which explains how your contribution towards the cost of care will be calculated.

The local authority social services department has a duty to carry out an assessment of your needs if it appears that you may be in need of community care services which the authority may provide or arrange by entering into a contract with another provider. You also have a right to an assessment if you are disabled⁷.

⁶ See guidance on this in: Department of Health circular HSC 2001/17: LAC (2001)26 at paragraphs 8 and 9; LAC 2003 (7): HSC 2003/006 at paragraph 30; and HSC 2003/009: *The Community Care (Delayed Discharged etc) Act 2003 Guidance for Implementation*, September 2003, LAC (2003)21

⁷ Set out in section 47 of the *NHS and Community Care Act 1990*.

Each local authority sets eligibility criteria to establish who they will provide different types of services based on national guidelines called *Fair Access to Care Services*. Once your needs have been assessed, the local authority will use those criteria to decide whether it should offer you services, including care in a care home. You should be given a written copy of your care assessment. If you are assessed as needing to live in a care home providing nursing care a NHS nurse will be involved in assessing and confirming your eligibility for NHS funded nursing care (see Section 2).

When the local authority arranges or provides a place in a home for you, it has to assess how much you should pay towards the costs (unless the accommodation is provided as part of your after-care services under Section 117 of the *Mental Health Act 1983* - see Section 2).

The rules governing financial eligibility for assistance with care home costs are set nationally by the Government⁸. From April 2008, residents with over £22,250 are expected to meet the full cost of their care.

You still have a right to a care assessment even if you have over £22,250 and will therefore be treated, under the current charging rules, as being able to pay the full cost of a care home.

Guidance has stated that even if you can make your own arrangements, you should still be advised about what type of care you require, and informed about what services are available. It goes on to say that even though you may have over £22,250 local authorities 'must satisfy themselves that the individual is able to make their own arrangements, or has others who are willing and able to make arrangements for them'⁹.

Therefore, if the care that you have been assessed as needing is not otherwise available to you, the local authority has a duty to make suitable arrangements for you. This may be because you are unable to make the arrangements yourself and no one is willing or able to assist.

⁸ The rules for the means-test are set out in the National Assistance (Assessment of Resources) Regulations 1992 as amended. The Government has produced guidance for local authorities about these rules, the *Charging for residential accommodation guide* (also known as CRAG). This can be accessed on the Department of Health website at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_073650 This factsheet is written using these Regulations and guidance.

⁹ LAC (98)19.

The advantage of this is that the care should be arranged at the local authority's usual cost. Local authorities must ignore capital below the current upper limit in deciding whether care and attention is 'otherwise available' to an individual¹⁰.

If the local authority is going to make the arrangements, because you need help with the fees or you are unable to make your own arrangements, there should be no 'undue delay' in its doing so. If there is a delay, the local authority should ensure that suitable arrangements are in place to meet your needs in the meantime.

The third annual report by the Commission for Social Care Inspection (CSCI) entitled *The state of social care in England 2006-07* was published on 28th January 2008. The report makes two contrasting findings: those who qualify for local authority support are having a better experience than previously; whilst those who fall outside the system, including those who have to self fund staying in a care home, generally have a poor quality of support and advice and often struggle to cope. As a result of the CSCI report, the Government has ordered a review of eligibility for adult care services.

Some financial help may also come from social security benefits. Eligibility for Pension Credit is solely dependent on how much income or capital you have and does not take account of your care needs.

4. The means-test

The charging procedure - sometimes called the means-test, or financial assessment - is the system of calculating how much you should contribute towards the costs of your care in a home. Temporary residents are treated differently in some respects - see Section 6.

The following terms may be used in connection with the charging process:

- the 'standard rate' is the amount it costs the local authority to provide a place in a home;
- the local authority's 'usual cost' is the maximum limit which it is usually prepared to pay for a particular type of care. These limits vary from authority to authority, and for different levels of care.

¹⁰ LAC (98)19.

If the home which you wish to enter costs more than the local authority's usual cost, a third party may have to agree to meet the shortfall between this and the actual cost of the home (the standard rate) - see Section 9 for further information.

If you are given a figure for the usual cost, check what it represents. Often it is the contract price that the local authority will agree with the care home and includes the amount that you will be assessed to contribute; the authority only pays the difference between your contribution and the contract price. For example, if the local authority says it will pay £500, this generally means that this is the price that they are prepared to go up to: the 'usual cost' for this type of accommodation. However, you may still be required to make a contribution based on their means test of your capital and income.

Anyone who has capital of their own above £22,250 will be assessed as being able to pay the 'standard rate'. If you live in a care home providing nursing care the NHS is responsible for meeting the cost of care provided by a registered nurse.

Residents with capital between £13,500 and £22,250 are expected to make some contribution from their capital as well as income. You should not have to make any contribution from your capital below £13,500, but you will still be expected to contribute from your income.

Local authorities cannot assess the joint resources of couples - they can only look at your own income and capital. This will include income and savings that are in your sole name and your share of any jointly held savings. Section 7 contains further information about how couples are affected by the charging rules.

The local authority has to allow the resident to retain a Personal Expenses Allowance (PEA) of £21.15 per week. You should not be asked to put your PEA towards meeting the basic cost of your care (see Section 10 for further details).

5. Permanent residents

5.1 Your capital

Most forms of capital and savings will be included in the means-test including bank or building society accounts, national savings accounts, premium bonds, stocks and shares, and property (building or land). See Section 5.2 to see whether the value of your home will be taken into account.

More than £22,250 in capital: You will be expected to pay the full fee until your capital is reduced to £22,250. However, no-one whose place is arranged by the local authority should have to pay more than the standard rate for the home, whatever their income or capital.

Capital between £13,500 and £22,250: Both income and capital are taken into account in the local authority means-test. Capital of between £13,500 and £22,250 will be assessed to show an assumed (or 'tariff') income. For every £250 or part of £250 of capital between £13,500 and £22,250 you will be assessed as though you have an extra £1 per week income. For example, if you have capital of £14,200 you will be treated as having an extra £3 per week income. If your assessed income includes tariff income make sure that your contribution is reviewed each time your capital drops into the next £250 'band'.

Capital below £13,500: No tariff income is assumed from capital below £13,500 for local authority charging purposes. Tariff income is calculated by the local social security office on savings over £10,000 for Pension Credit purposes at a rate of £1 per week for every £500 or part of £500.

Disregarded capital: Some capital is disregarded or ignored. Section 5.2 explains when property will be disregarded. Capital which is disregarded indefinitely includes the surrender value of life insurance policies or annuities, the value of funds held in trust or administered by a court, which derive from a payment for personal injury, including compensation for vaccine damage and criminal injuries, and personal possessions (as long as they were not bought with the intention of avoiding the charge). Following consultation by the Government in 2007, changes to the rules regarding personal injury payments and residential care charging are being planned for 2008.

The value of certain types of investment bond with a life assurance element is disregarded.

If you hold an investment bond but are unsure whether it has a life assurance element, ask the company that issued the bond or your financial adviser to confirm this. *Age Concern cannot advise on the nature of particular financial products.*

Capital held in a discretionary trust is not treated as your capital so has the same effect as being disregarded. The rules about trusts are complicated so seek advice. The £10,000 compensation payment made to Far Eastern prisoners of war on or after 1st February 2001 is disregarded. Age related payments made by the DWP to pensioners aged over 70 are also disregarded.

Jointly held capital: If you jointly hold capital with another person or people, you and the other the joint owners are treated as having equal interests in that capital (except for jointly owned property - see Section 5.2).

For example, if you have a joint bank or building society account with your spouse or partner you will be assessed as having half of the balance of the account. In these circumstances it is worth considering dividing any joint accounts so that each person holds their capital separately. Where one account holder uses part of their share of the account to meet care fees, dividing the remainder equally will not accurately reflect the parties' true interests in it.

Notional capital: This is capital which may be included in the means-test even though you do not have it. For example, this could be capital which would be available to you on application, or capital which you have disposed of in order to avoid using it to pay for care (see Section 8 about deliberate deprivation).

Valuation of capital: Capital will either have a market value - that is, the amount a willing buyer would pay (eg, for stocks and shares), or a surrender value (eg, premium bonds). Any outstanding debt secured against the asset, such as a mortgage, is deducted from the value. If, in order to realise an asset, you would incur expenses through selling it, then 10% will be deducted from the capital value for the purposes of the means-test. If your capital is valued at more than £22,250 then no precise valuation is needed because you are then expected to pay the full fee yourself.

5.2 Treatment of your former home

This section briefly describes how the value of your former home might be treated in the means-test. Further information is contained in Age Concern Factsheet 38, *Treatment of the former home as capital for people in care homes*.

The value of your former home will usually be taken into account but must be disregarded (ignored) by both the local authority and the local social security office where it is occupied by one or more of the following:

- your spouse, civil partner or someone you live with as if you were married or civil partners;
- a relative¹¹ who is aged 60 or over;
- a relative who is aged under 60 but is incapacitated¹²;
- a child under the age of 16 whom the resident (the person entering a home) is liable to maintain. (This applies to local authorities only);
- a lone parent who is estranged/divorced from the resident (local authority only).

The local authority (but not the Pension Service) also has a discretionary power to ignore the value of any premises where the local authority considers it reasonable to do so, for instance, if it is lived in by someone who does not fit into the above categories - perhaps, a younger relative who is not incapacitated but has been helping to look after you; or a friend who lives with you who is 60 or over.

For all residents, the local authority must disregard your property for the first 12 weeks of being a permanent resident in a care home funded by the local authority. If your stay was initially temporary the 12 weeks runs from the date it is decided your care is permanent. If the property is sold within this 12 week period then the disregard ceases to have effect from the date of sale, and so the proceeds will be counted as capital.

¹¹ A relative is: parent; parent-in-law; son; son-in-law; daughter; daughter-in-law; step-parent; step-son; step-daughter; brother, sister (and the spouse or partner of any of the above); grandparent, grandchild; uncle; aunt; nephew; niece.

¹² 'Incapacitated' is not defined but could include a person who receives one or more of: Incapacity Benefit; Severe Disablement Allowance; Disability Living Allowance; Attendance Allowance; Constant Attendance Allowance; or a similar benefit; or someone who does not receive one of these benefits but whose capacity would be similar to someone who does receive such a benefit. Medical or other evidence may be useful in proving this.

The Department of Health has recently stated that the 12 week disregard includes self-funding residents who have been permanently in a care home for more than 12 weeks and who find that they need local authority assistance due to their financial situation. This was in a response to an Ombudsman's enquiry that was ultimately settled before a decision was issued. It relates to a definition of 'resident' (for the purposes of the Assessment of Resources Regulations) as only commencing at the point when an individual is assisted with funding by a local authority under Part III of the National Assistance Act.¹³

It is the understanding of Age Concern that the above is a departure from the previous interpretation of the guidance in Local Authority Circular (2001) 10 and the Assessment of Resources Regulations, which was that the 12 week property disregard rule was provided to offer time for a resident to decide how best to fund the move following their permanent entry into a care home. The position was therefore that if you had been self-funding your own care for more than 12 weeks and then approached the local authority for help whilst your property was up for sale, you would not be entitled to the property disregard.

At the time of writing (March 2008), the Department of Health has not issued guidance to local authorities regarding its response to the Ombudsman's enquiry. As a result, the approach of local authorities to self-funding residents who are in-situ and then find they need local authority financial assistance may not have changed. However, if a local authority does not offer the disregard on the grounds that you have been a permanent and self-funding resident for too long, you should query this decision in light of the recent Department of Health's Ombudsman enquiry response.

Joint owners: If you jointly own property with someone else the current value of your interest in the property will be taken into account unless one of the disregards mentioned above applies. The value of your interest may in some circumstances be lower than the share of the proceeds that you would receive were the whole property to be sold. For more details on the treatment of jointly owned property, see Factsheet 38 referred to above.

¹³ Age Concern was alerted to this development by the author of the Disability Rights Handbook, which is published by the Disability Alliance.

‘Deferred payment agreements’ where capital is tied up in property:

If the value of your property is such that you are assessed as able to meet the full cost of care but you do not want to sell the property immediately and do not have enough readily available funds to pay the fees in the meantime, funding may be available through a ‘deferred payment agreement’¹⁴. Under a deferred payment agreement the local authority assists with the cost of your care and you repay the authority when the property is sold at some future point. The deferred payment agreement commences after the mandatory 12 week disregard finishes.

If you enter into a deferred payment agreement the local authority will place a legal charge on your property, to secure the debt. You may be asked to cover the costs of land registry searches and other such legal expenses. The agreement will be in writing and will last from the time you enter into the agreement until 56 days after you die, or the date on which you want to terminate the agreement. No interest can be charged while the agreement lasts.

Guidance issued to local authorities says that they should promote the option of deferred payments for those residents whose property is being taken into account. If you wish to enter into a deferred payment agreement and the local authority refuses you should be given a written explanation of the reasons why. Such a decision can be challenged through the authority’s complaints procedure.

Legal charges for debt. Local authorities can also place a legal charge on your property without your consent to secure any debt that arises as a result of your refusing to pay your assessed contribution¹⁵. If you are willing to pay at some future point a deferred payment agreement should be used instead. See Factsheet 38, *Treatment of the former home as capital for people in care homes*, for further details.

¹⁴ Guidance on deferred payments can be found in LAC (2001)25 and LAC (2001)29.

¹⁵ Under section 22 of the *Health and Social Services and Social Security Adjudications Act (HASSASSA) 1983*.

Renting out your property: You may be able to rent out your property, and put the income generated towards the cost of your care. Seek financial and legal advice before doing so. If your income from the rent and other sources does not cover the fees you may have to enter into a deferred payment agreement with the local authority, which will take any rental income into account when assessing how much you should contribute in the meantime.

Once your property has been sold, the local authority may want to end its contract with the home. The local authority must inform you in writing that it is ending its involvement. You may then need to make your own contract with the home. However the local authority still has to make arrangements for you if you are not able to and there is no one else who is willing and able to. It may be worth seeking independent financial advice on how best to invest the proceeds from the sale of your property. *Age Concern is not able to provide financial advice.*

5.3 Your income

If you are the person assessed as needing care in a home, then income in *your* name will be looked at for the purposes of the means-test. The local authority will usually make its calculations on the basis that any income that is available from benefits such as Pension Credit is being claimed. It is important therefore to ensure that any possible benefit entitlement is applied for. Your Income will be taken into account during the 12 week property disregard and deferred payment arrangements discussed in section 5.2.

In the local authority means-test, income will be either:

- disregarded (ignored); **or**
- partly disregarded; **or**
- included.

Income which is disregarded: Some types of income are disregarded in the means-test calculation. The most common disregards include:

- Disability Living Allowance mobility component;
- War Widow's Special Payments - the special payment of £73.64 introduced in April 1990 for 'pre 1973 war widows' (in addition to the £10 partial disregard for war widows described below);

- Christmas bonus;
- income from savings - if you have interest paid on your savings, this is added to the balance of your savings and counts as part of your capital - not as income: see Section 5.1 for calculating tariff income from capital;
- certain charitable and voluntary payments (which could be made by a relative) intended to be used to pay for a specific item *not* covered by the home's fees - for instance to enable you to have your own television set or telephone, or for a regular outing not covered by the contract with the local authority. This has been confirmed by an explanatory memorandum to Government Regulations,¹⁶ which was published on 7th April 2008;
- Supporting People payments made to or on behalf of residents in respect of housing costs previously covered by Income Support or Housing Benefit are disregarded. Councils should also disregard the payments made by residents to councils towards housing support costs;
- any payments of Child Tax Credit or Guardian's Allowance;
- any payment made in consequence of any personal injury to a claimant or his or her partner, where the payment is specifically intended to cover the costs of care, shall for a period of up to 52 weeks from the day of receipt of the first payment be disregarded (in calculation of capital);¹⁷ and
- awards of certain damages are also to be disregarded, not only where those awards are held by the court (as at present) but where they are held subject to the order of direction of the court (in the calculation of capital).¹⁸

¹⁶ Explanatory memorandum to The National Assistance (sums for personal requirements and assessment of resources) amendment (England) Regulations 2008, section 7.6.i.

¹⁷ Explanatory memorandum to The National Assistance (sums for personal requirements and assessment of resources) amendment (England) Regulations 2008, section 7.6.ii.

¹⁸ Explanatory memorandum to The National Assistance (sums for personal requirements and assessment of resources) amendment (England) Regulations 2008, section 7.6.iii.

Income which is *partly* disregarded: Some kinds of income must be partly disregarded, such as:

- £10 per week of a War Widow's, War Widower's or War Disablement Pension;
- £20 per week of certain charitable and voluntary payments (which could be made by a relative) to help with expenses *already* covered by the local authority's contract with the home, for instance for food or heating;
- however, the *total* of the partial disregard of income from these regular charitable or voluntary payments *and* war pensions (detailed above) is £20 per week;
- 50% of a private pension must be ignored by the local authority (but not for Pension Credit purposes) where the pension is received by a married person or a civil partner in a home, provided this amount is paid to his or her spouse or civil partner - and the spouse or civil partner does not live in the same residential or nursing home. See also Section 7.2;
- qualifying income for Pension Credit savings credit equivalent to the amount of savings credit received is disregarded up to a maximum of £5.45 per week (£8.15 for a couple).

For individuals with higher incomes who are unable to claim Pension Credit or have been awarded less than £5.45/£8.15 per week a flat rate disregard of £5.45/£8.15 per week is applied. See below for further details about Pension Credit.

Income which is included: Income such as your state retirement pension, Pension Credit other than any amount specifically disregarded, tariff income from capital (see Section 5.1), and private pensions will be included in full. See also above and Section 7.2 if you are one of a couple and receive a private pension.

Social security benefits: Whether you are single or one of a couple, the local authority will expect you to claim all the social security benefits to which you are entitled when you move to live permanently in a care home. If you are already claiming a social security benefit, the local authority may ask to see details of the benefit you are receiving. It may also ask you for permission to request information from your local social security office. Social security benefits include the state retirement pension, Attendance Allowance and Pension Credit.

Pension Credit: Pension Credit has two parts the guarantee credit and the savings credit. The general rules governing eligibility for Pension Credit are explained in Age Concern Factsheet 48, *Pension Credit*.

Pension Credit is means tested and eligibility is based upon the claimant's income and capital. For a resident living permanently in a care home capital up to £10,000 is disregarded, for someone living in their own home or temporarily in a care home capital up to £6,000 is disregarded.

See Sections 6 and 7 of this factsheet for further information about how couples and temporary residents are treated. The figures given below for couples refer to couples who are permanently living together.

If one of a couple enters a care home on a temporary basis then they will still be treated as a couple for Pension Credit purposes. The claimant is treated as having tariff income of £1 per week for every £500 (or part of £500) above the lower capital limit. There is no upper capital limit.

Eligibility for either of the components of Pension Credit is established by totalling up the person's income, including any tariff income. Most forms of income are taken into account but some items are disregarded. Details of the items that are disregarded for guarantee credit and for savings credit can be found in Factsheet 48, *Pension Credit*.

The **guarantee credit** tops income up to a set level for individuals whose income is below that level. The level of income which the claimant is said to need is known as the 'appropriate amount'.

The standard levels are £124.05 per week for a single person and £189.35 for a couple, but additional amounts may be added to this if the claimant is receiving AA/DLA care and lives alone, is a carer or for certain housing costs. The amount of guarantee credit paid will usually be the difference between the claimant's existing income, less any disregarded amounts, and the appropriate amount.

The **savings credit** is only available to claimants aged 65 or over. If you have 'qualifying income' above a certain level you may be able to claim the savings credit. Those levels are currently £91.20 per week for a single person (and £145.80 for a couple). If your qualifying income is more than this but less than £124.05 per week (£189.35 for a couple), savings credit is calculated at a rate of 60p for every £1 of income above the lower limit up to a maximum of £19.71 per week for a single person (£26.13 for a couple). For incomes greater than £124.05/£189.35 per week, savings credit is reduced from its maximum level by 40p for every £1 of income above those levels. A single person with qualifying income of £174.00 per week, or a couple with qualifying income of £255.00 would therefore not qualify for savings credit.

Under the local authority charging rules, guarantee credit is taken into account as income. For claimants with qualifying income up to £124.05 (£189.35 for a couple) the authority has to disregard an amount equivalent to any savings credit awarded up to a maximum of £5.45 per week (£8.15 for a couple).

For claimants with qualifying income of greater than £124.05 per week (£189.35 for a couple), who either receive savings credit or are ineligible because their qualifying income is too high, a flat rate disregard of £5.45 per week (£8.15 for a couple) is applied.

Pension Credit and property: Whilst you are trying to sell a property which is not disregarded for another reason Pension Credit can be paid for 26 weeks (or longer 'if reasonable'), provided that the office handling your claim is satisfied that you are taking 'reasonable steps' to sell it. This Pension Credit does not have to be repaid when your property is sold. There is no upper capital limit for Pension Credit; it is therefore possible, but unlikely, someone with a property with a low value might in some circumstances be able to claim Pension Credit even if the property was being taken into account.

There is no 12 week property disregard for Pension Credit. Entitlement to the benefit will cease during the period of the 12 week local authority disregard unless the property is put on the market.

If the property is put on the market at the end of that period a further claim for Pension Credit can be made until the property is sold. The local authority will have to adjust its charges accordingly.

The local authority should charge you based on the actual income you receive and alter the charge to take account of any changes. It is important to check your benefits and what the local authority charges you to make sure they tally.

Attendance Allowance/Disability Living Allowance (care component): People who pay the full cost of their fees, including those in local authority homes, are able to claim or continue receiving AA/DLA (care component). The NHS payment for NHS-funded nursing care in care homes should not affect your entitlement to AA/DLA (care component).

If you already receive AA/DLA (care component) and move permanently into a home arranged by the local authority, it will be included as part of your income. However, payment of AA/DLA (care component) will normally stop after 4 weeks (sooner if it is linked with a stay in hospital or an earlier period of state-funded care) if you are receiving financial help from the local authority. If the local authority has arranged your care and made a contract with the care home but you are paying the full cost of your personal care and accommodation you should still be able to receive AA/DLA (care component).

AA/DLA will also stop after 4 weeks of funding under the 12 week property disregard. If, at the end of the 12 weeks, you continue to receive local authority funding but on an interim (ie, loan) basis under the deferred payment scheme (see Section 5.3 above), your AA/DLA (care component) should be reinstated.

AA/DLA (care component) can be paid while you are receiving interim or temporary funding from the local authority (eg, while you are selling your property) provided that any assistance received from the local authority will later be repaid in full.

From 29th October 2007, under Section 60 of the Welfare Reform Act 2007, new AA/DLA (care component) Regulations¹⁹ came into force regarding a stay in a care home with some form of local authority funding. The new Regulations clarify when you are considered to be resident in a care home and therefore, after 4 weeks, not entitled to payment of AA/DLA (care component).

¹⁹ Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007

You will be considered to be resident in a care home when any of the costs of any qualifying services (accommodation, board and personal care) provided for you are paid for out of public or local funds under specified legislation. The list of specified legislation is now provided for in these Regulations instead of primary legislation. 'Qualifying services' do not include such services as domiciliary services, including personal care, provided to you in your own private home.

The new Regulations clarify the days that count as being resident in a care home for the purpose of AA/DLA (care component) entitlement. If you go into a care home from the community, the days you enter and leave are counted as days in the community and the day of transfer between a care home and a hospital or similar institution (or vice versa) is to be treated as a day in a care home.

Pension Credit can be paid while you are receiving interim funding providing that your property is up for sale. If AA/DLA (care component) is being paid at the same time then the appropriate amount for guarantee credit should be calculated to include the additional amount for severe disability, currently £50.35 per week, which may reduce the amount which ultimately has to be repaid to the local authority from your capital.

If you enter into a deferred payment agreement (see Section 5.2) AA/DLA (care component) should be paid as long as you will be refunding the local authority in full but eligibility for Pension Credit may be affected if your property is not up for sale.

If your AA/DLA (care component) has been stopped because you are getting local authority funding and you subsequently return home - or move elsewhere such as sheltered housing - you can ask for payments of AA/DLA (care component) to begin again.

It can also begin again if the local authority no longer needs to give financial help for the cost of the fees, for example if you inherit capital. It is important to inform the appropriate authority of any changes so that all the benefits you are entitled to are received.

Note that AA/DLA (care component) might be payable if you are temporarily away from a care home. You should always inform the social security office responsible if you want your AA/DLA (care component) paid again.

Age Concern has produced an Information Sheet IS/13, *Care Home Funding and Attendance Allowance*, which explains the rules in more detail and a free copy can be obtained by calling 0800 00 99 66 (free call). Further information about AA/DLA (care component) is available in Age Concern Factsheet 34, *Attendance Allowance and Disability Living Allowance*. See also Section 13.

Third party contributions: If you decide to live in a home costing more than the local authority would normally provide for someone with your assessed needs (see Section 9 on choosing a home), someone else may have to pay the difference between the local authority's usual cost and the home's fees. Such payments are called 'third party' contributions and will be ignored for Pension Credit purposes, but included as part of your income by the local authority. For example, if the home costs £450 per week but the local authority's limit is £400 per week, a third party payment of £50 per week may be required.

The resident's contribution is calculated using the charging rules and the local authority pays the amount left once the resident's contribution and the third party payment have been deducted from the cost of the home. The local authority maintains a responsibility to ensure the care home payment throughout the duration of this arrangement.

'Notional' income: This is income which you may be treated as having even though you don't actually receive it. For instance, this could be income which is paid by someone else (perhaps a relative or charity) to the local authority or the home as a 'third party contribution'; or income which would be available to you if you applied for it, such as unclaimed social security benefits, or unclaimed occupational pension; or income which you have disposed of (see Section 8 about deliberate deprivation).

5.4 The means-test calculations

Once the local authority has all the information about your income and savings, it can calculate how much you should contribute towards the costs of your care, making sure that you are left with a weekly Personal Expenses Allowance (PEA) of £21.15. The local authority should tell you - normally in writing - how it has calculated the amount you should pay. The following are given as *examples only*, to help you work out how much your contribution might be.

Example 1

The local authority arranges for you to move permanently into a care home run by a charity. The home costs £500 per week, which is within the local authority's usual limit. You are 83 and single, and live in a rented flat. You have capital of £5,000 and your weekly income is the basic state retirement pension of £90.95 (including the 80+ age addition of 25 pence), and Pension Credit guarantee credit of £33.10 to give an applicable amount of £124.05 per week.

What is ignored: Your capital is ignored by the local authority because it is less than £13,500 (£10,000 for Pension Credit once you are permanently living in a care home).

The local authority calculation	£
Total weekly income (£90.95 plus £33.10)	124.05
less personal expenses allowance (PEA)	<u>21.15</u>
Your weekly contribution	102.90
Cost of the home	500.00
Less your contribution	<u>102.09</u>
Local authority's contribution	<u>397.91</u>

Example 2

The local authority agrees to arrange a permanent place for you to enter a care home which costs £550 per week, the local authority's usual rate. You are married, aged 82, with a weekly private pension (£140). Your wife will remain living in the flat you jointly own. Your state retirement pension is £90.95 per week (including the 80+ age addition of 25 pence). You have a savings account in your name of £10,400 and a joint account with your wife of £8,000. (If this describes a situation similar to your own, see also Section 7 about couples).

What is ignored: The value of your flat is ignored because your wife continues to live there. Half of your private pension will be ignored by the local authority if you are paying this half to your wife.

What is included: Your savings of £10,400 are included in the local authority calculation, together with half of the balance of the joint account you hold with your wife ie £4,000 - your total capital will be assessed as £14,400, so you will have a tariff income of £4 per week. Your state retirement pension and the other half of your private pension are included.

Because of the level of your weekly income you will not qualify for Pension Credit guarantee credit (income above £124.05) or savings credit (income above £174.00). However, as your assessed income is in excess of £174.00 per week the local authority must disregard £5.45 per week of that income (in addition to allowing you to retain a PEA of £21.15).

The local authority calculation

Your weekly income	£
State retirement pension	90.95
50% private pension	70.00
tariff income from capital	<u>4.00</u>
	164.95
less personal expenses allowance (PEA)	21.15
less disregard of qualifying income for Pension Credit	<u>5.45</u>
	138.35
Your weekly contribution	
Cost of the home	550.00
Less your contribution	<u>138.35</u>
Local authority's contribution	<u>411.65</u>

Remember to notify the local authority each time the balance of your capital drops into the next £250 'band', as this will reduce your tariff income and in turn reduce your weekly contribution.

Local authorities have a discretionary power to vary the PEA in a range of circumstances. The Government document entitled the *Charging for Residential Accommodation Guide* provides an illustrative list of examples to assist local authorities in the use of this discretionary power. If you are experiencing financial difficulties once you become a care home resident, it may be advisable to request an increase in your PEA.

6. Temporary residents

Some people go into a home on a temporary basis – to give themselves or their carers a break, or whilst they are recuperating from an illness. If your temporary care is part of an 'intermediate care' package it should be free. See Section 2.

Some people enter a home temporarily for a 'trial' period - that is, in order to decide whether they want to live permanently in that home. See Section 6.2.

Your care assessment (see Section 2) should show whether your stay is being regarded as a temporary or a permanent one. The local authority can agree that your stay is temporary for up to 52 weeks, or longer in exceptional circumstances.

If the local authority arranges a temporary stay for you in a home, it can ask you to contribute towards the cost in one of two ways. It can either apply the means-test to you straightaway, or for the first eight weeks it can ask you to pay an amount which is 'reasonable' for you to contribute. After eight weeks, it *must* apply the means-test to you, but taking account of the differences for temporary residents outlined below.

The eight week period applies to individual periods of care – regular periods of respite care separated by time at home are not added together in calculating when the means test must be applied.

When the local authority does carry out the means-test, either straightaway or after eight continuous weeks of temporary care, the same upper and lower capital limits, £22,250 and £13,500, apply as for permanent residents. There are however some differences in the rules for temporary residents and the authority must:

- ignore the value of your home if you intend to return to live there (and it is still available for you to do so) or if you are taking steps to dispose of this property in order to buy something more suitable in which you will live instead;
- ignore some of your income so you can continue to pay bills at home - for instance, water rates; insurance premiums, standard charges for fuel;
- ignore any help with housing costs from Pension Credit which you usually get whilst living in your own home;
- ignore any Housing Benefit which you usually receive whilst living in your own home;
- ignore any Attendance Allowance or Disability Living Allowance care component (AA/DLA (care component) which you receive (DLA mobility is ignored in all cases).

Your other capital and income will be included in the means-test as outlined in Section 5. If the amounts which the local authority ignores from your income so that you can continue to pay your bills at home are not enough, you could make a complaint to the authority to this effect, using the local authority's complaints procedure. See Section 12.

AA/DLA is disregarded from the means test for temporary care but will stop after four weeks of local authority funded care. Once you return home, AA/DLA (care component) can resume. But if you return to a care home within 28 days of your last stay, AA/DLA (care component) may be affected. Tell the office handling your claim if you are going in or out of a care home. See Age Concern Factsheet 34, *Attendance Allowance and Disability Living Allowance*.

Where one of a couple enters a home on a temporary basis, Pension Credit is still calculated and paid at the rate for a couple rather than the rate for two single people.

Local authorities have been instructed to exercise discretion when carrying out financial assessments in these circumstances to ensure that the person remaining at home is left with sufficient income for their needs.

For temporary stays, if you are one of a couple, tariff income will be applied to any capital which you have above £6,000 as a couple, (not £6,000 each).

6.1 When temporary care becomes permanent

Sometimes care may be arranged on a temporary basis, but it then becomes apparent that you need to stay in a home permanently.

If so, then the local authority will need to apply the means-test for a permanent resident, as outlined in Section 5, from the date it is decided your stay is to become permanent. The value of any property you own should be disregarded for 12 weeks from the date your stay is confirmed as permanent (see Section 5.2).

Similarly, a stay which was initially assessed as permanent may turn out to be temporary - because you are able to leave the home to return to your own home, or to move in with friends or family, or to enter sheltered housing for example. If so, the Department of Health's guidance²⁰ is that it would be unreasonable to continue to apply to that resident any rules which would have affected him/her as a permanent resident - such as taking the value of property into account, and in particular the placing of a legal charge on the property.

6.2 'Trial' periods

You might be a temporary resident because you have entered a home on a 'trial' basis: that is, to see whether you would like to stay in that home permanently. If you receive Housing Benefit or Pension Credit housing costs or Council Tax Benefit for your own home, you should note that these can only be paid for 13 weeks if you are having a 'trial' period in a care home.

7. Couples

This section deals with specific issues which may affect couples. By couples or partners, this means wives, husbands, civil partners or someone you live with as though you are a married couple or civil partners.

7.1 Couples who live in the same care home

Sometimes couples live together in the same care home. If you can make your own arrangements and pay the fees, you are free to do so. However, you may also need to know how the means-test system might be applied in your case were you to need state financial support in the future.

The means-test is applied by local authorities to couples in the same way as for single people, or where only one of a couple moves to live in a home.

²⁰ See footnote 6 - page 7.

This means, that, in order for you both to obtain financial support from the local authority, you must both be assessed as needing care provided in the type of home you have entered. Once this has been agreed, the local authority must²¹ look separately at the income and savings which you each have in your name, and calculate how much each of you should contribute from your separate resources.

Although you may be living in the same care home, perhaps even sharing a room, the local authority must still financially assess each of you individually as if you were two single people, and not assess your money as a couple. This means that if you each have £22,250 or less in savings, each of you may be eligible for financial help from the local authority.

In some circumstances you may be assessed as a couple for Pension Credit purposes. This is most likely to happen where you share a room in the same home. If so your income and capital will be assessed jointly by the social security office dealing with the claim and tariff income would start to be applied on any capital over £10,000 held between you.

However, case law has established that in most cases you should be treated as separate individuals if you are in a care home even if you share a room. Each case will be looked at on its own merits. If you are treated as separate individuals you could each have £10,000 capital which tariff income could not be levied upon. Seek advice about appealing if you are being treated as a couple.

7.2 One of a couple remaining in the family home - income

If your income is reduced because your partner or spouse has moved to live permanently in a home, you should check to see whether you might now be eligible for Income Support, Housing Benefit (for help towards your rent) or Council Tax Benefit (or discount if you now live alone). Age Concern Factsheet 18, *A brief guide to money benefits*, may be helpful. If you are married or civil partners and your spouse who is in a home receives an occupational pension, personal pension or payment from a retirement annuity contract, then half this money can be paid to you by your spouse/civil partner.

²¹ Under the *National Assistance Act 1948*, the local authority has no powers jointly to assess the resources of couples.

If so, the local authority has to disregard the amount passed back to the spouse when calculating how much your spouse/civil partner should pay towards the costs of their care in a home.

If you do receive half your spouse/civil partner's income from these sources, it may affect your entitlement to means tested benefits such as Pension Credit - because this amount will now count as part of your income.

This disregard by the local authority does not apply to partners who are not married or in a civil partnership, which can cause difficulties for such partners if the person living in a care home has more resources than their partner remaining at home.

Unmarried partners can ask the local authority to use its discretionary power to vary the amount of the personal expenses allowance - that is, the amount of £21.15 per week which it must ignore from the resident's income. By varying the personal expenses allowance, your partner would be able to pay some of their income to you. Because this power is discretionary, the local authority may - but does not have to - do this.

If the local authority does use its discretion, any income which you receive might affect other benefits to which you might be entitled - such as Pension Credit or Council Tax Benefit.

Age Concern Factsheet 39, *Paying for care in a care home if you have a partner*, has more information about this discretionary power, and the private pension disregard described above.

7.3 Liability of your spouse

Under the *National Assistance Act 1948*, local authorities have a discretionary power to seek 'liable relative payments' from spouses of care home residents.

The Department of Health intends to abolish the liable relative rule and has included this change of law in the new Health and Social Care Bill, which at the time of writing, is progressing through Parliament. The Department of Health has previously issued guidance to local authorities strongly encouraging them not to seek liable relative payments pending the repeal of the rules.

Age Concern Factsheet 39, *Paying for care in a care home if you have a partner*, has more details about liable relative payments. If your local authority still wishes to try and negotiate a liable relative payment, please contact Age Concern for further advice.

8. Deprivation of assets

If you give away assets or otherwise dispose of them in order to put yourself into a more favourable position to get local authority assistance with your care home fees, the local authority may be able to assess you as if you still have the assets. Department of Health guidance²² to local authorities suggests that the timing and motive behind the transfer should be taken into account. The local social security office can also consider whether assets were disposed of deliberately in order to qualify for means tested benefits such as Pension Credit.

Further information about intentional deprivation and the impact which this could have on you, or the person(s) to whom you have given assets, is contained in Age Concern Factsheet 40, *Transfer of assets and paying for care in a care home*.

9. Choosing a home: third party contributions

When the local authority makes arrangements for you to enter a home, you have the right to choose the home which you go to - with certain restrictions.

The local authority should tell you what arrangement it will make according to its assessment of your needs. It should also give you information about homes on its 'preferred list' of providers (if it has one), and about other homes in your area; and should tell you that you can enter the home of your choice currently anywhere in England and Wales, and in Scotland by special arrangement²³.

The *Health and Social Care Act 2001* also allows regulations to be made to extend this choice to Northern Ireland, the Isle of Man and the Channel Islands.

²² See footnote 6, page 7.

²³ The Government guidance about choosing a home and third party payments is in Local Authority Circular LAC (2004)20.

If you choose a home (your 'preferred accommodation') which is different from the home which the local authority suggests, then the local authority must make an arrangement for you to enter that home provided:

- it appears to the local authority to be suitable for your assessed needs;
- it is available – ie, the home has a vacancy, or is open;
- the cost to the local authority is not more than it would normally expect to pay for someone with your assessed needs;
- the provider of the accommodation and the local authority agree to enter into a contract for your place, subject to the local authority's usual terms and conditions for such care.

Third-party contribution: If your 'preferred accommodation' would cost more than the local authority would normally pay for someone with your assessed needs, it must still make the arrangements for you in that home as long as someone else (and in some cases yourself - see below) can make up the difference between that figure and the home's fee by making a third party contribution.

This does not mean that local authorities can set arbitrary ceilings on the amount which they will pay. The authority must be able to demonstrate that care suitable to meet your assessed needs can be arranged at its usual cost. It should only seek top-up payment from a third party where you have chosen to enter a home costing more than its usual amount. If you have entered more expensive home out of necessity, the local authority should agree to meet the extra cost. A more expensive home might be necessary, for example, if you have particular needs which can not be met in the accommodation offered (for example, religious or dietary needs, or the need to be near relatives such as your spouse), or if market pressures mean that there are no homes in the area accepting residents at the local authority's usual rate.

Age Concern Information Sheet IS/25, *Choice of Accommodation - Care Homes*, explains in more detail the rules about preferred accommodation and when local authorities can ask for top up payments. Age Concern Factsheet 29, *Finding care home accommodation*, offers further advice on finding accommodation suitable to meet your needs.

Where a third party does agree to make a payment, the local authority is obliged to make a contract with your preferred home subject to the conditions outlined above. However, the third party will need to show that they can reasonably expect to be able to contribute for as long as the arrangement lasts - ie for the length of time the resident is in the home.

The third party and the local authority will also need to agree what will happen if the home's fees are raised: the local authority will not necessarily agree to pay for all, or even part of, such an increase. If the third party payments cannot be continued for some reason, you may have to move to another home but the local authority should carry out an assessment of the risks involved before taking this course of action.

Presently, a spouse who is making a liable relative contribution is not allowed to enter into a third party agreement to make up the cost of a more expensive home; although where such an arrangement was entered into prior to 1st October 2001 it may be allowed to continue²⁴. See Section 7.3 above regarding the prospective new liable relative rules.

Residents' contributions to more expensive accommodation

The Department of Health has said in guidance²⁵ to local authorities that it is not possible for residents to act as their own third parties by using the personal expenses allowance, or any disregarded capital or income, to top up the basic cost of accommodation covered by the local authority's contract with the home.

Residents whose property is subject to the 12 week disregard, or who have entered into a 'deferred payment agreement', can make up the cost of more expensive accommodation themselves, from disregarded capital or income. An exception is made to the usual rule for people in those specific circumstances as they are considered to have enough resources themselves to pay for more expensive accommodation once the value of their home is realised²⁶.

Further information about deferred payments can be found in Age Concern Factsheet 38, *Treatment of the former home as capital for people in care homes*.

²⁴ LAC(2001)25 and LAC(2001)29.

²⁵ As footnote 6, page 7.

²⁶ See footnote 6, p7.

10. 'Extras' in homes

You should make sure you find out *exactly* what care the local authority is arranging for you when it makes a contract with a home, and in the case of care homes with nursing, confirm whether or not the NHS contribution (£101 per week) has been included in the basic contract price.

The basic contract price should cover all essential care but may not, for instance, cover such things as clothing or hairdressing. The local authority may expect you to use your personal expenses allowance (PEA) of £21.15 to cover costs such as these. It is the Department of Health's view that there is a difference between a resident paying for more expensive accommodation and paying for 'extras' which do not form part of the care package. The PEA should not be spent on aspects of board, lodgings and care that have been contracted for by the council.

This does not preclude residents buying extra services from the care home, where these are genuinely additional to those services that have been contracted for by the council and/or have been assessed as necessary by the council or NHS²⁷.

The NHS is responsible for providing community health services to people in care homes on the same basis as to people in their own homes. These services include provision of district nursing and other specialist nursing services and advice such as incontinence advice or stoma care, as well as providing (where necessary) incontinence supplies and nursing aids, physiotherapy, speech and language therapy and chiropody.

Where such services are provided by the NHS, they are free of charge. The NHS will cover the cost of any equipment for your use in addition to the standard equipment that the home provides as part of its services (such as specialist feeding equipment). See Section 2 for further details of NHS responsibilities towards residents in care homes which provide nursing care.

Each Primary Care Trust should have its own criteria for the type of help it will provide, based on guidance issued by the Government. These criteria should be published.

²⁷ LAC (2002)11.

Local authorities are required to have long term care charters covering social services, health and housing called *Better Care, Higher Standards*. Contact your local authority for a copy of this Charter. If you have difficulties in obtaining information about the PCT's criteria, or you feel these have not been correctly applied to you, you can complain. See also Section 2 and Age Concern Factsheet 20, *NHS continuing healthcare, NHS-funded nursing care and intermediate care*, for details of how to challenge a decision.

If your care has been arranged by the local authority or the NHS you will not have a formal contract with the home. However, you should be given a statement of terms and conditions which shows exactly what care the local authority or NHS intends should be included in the fee paid to the home and who you can complain to if you are dissatisfied. This agreement could form part of your 'care plan' which a local authority should prepare with you following the assessment of your needs.

If you have arranged your own care you should have a written contract covering areas such as the room you are entitled to occupy, fees payable, care and services covered by the fee, anything that is not included in the fee and the period of notice. See Factsheet 29, *Finding care home accommodation*.

11. Paying the bills; collecting benefits; acting for someone who cannot make their own decisions

When a local authority arranges a place for you in a care home, it is ultimately responsible for paying the agreed fee to the home, but it may not necessarily pay it all directly.

There are two main ways of paying:

- the local authority can pay the full fee, and then collect from you the amount you have been assessed to pay, including any benefits you receive;

or

- if all three parties agree (you, the local authority and the home), then you and the local authority can each pay your respective share directly to the home.

You should always be offered a choice between the two options.

Appointeeships: If a person receiving social security benefits is unable to manage his or her affairs, the Secretary of State for Work and Pensions (through the local social security office) can appoint someone else to exercise on behalf of the claimant (the person in the home) the right to make claims and receive benefit on behalf of the resident. An appointee would normally be a close friend or relative who visits the older person regularly. As a 'last resort', the home owner can act as appointee, but in such cases he or she must keep a record of the money which is collected on the person's behalf. Appointeeship only covers social security benefits. The claimant and the prospective appointee will be interviewed before any appointment is made.

Legal arrangements for looking after someone else's financial affairs, welfare and healthcare: Whilst you are able to make decisions, it may be appropriate for you to consider how you would want your affairs dealt with if you lose the capacity to do this in future.

On 1st October 2007, the *Mental Capacity Act 2005* was implemented in full. The aim of the *Act* is to maximise the capacity of those who lack capacity or who may lack the capacity to take certain decisions for themselves; protect vulnerable adults with mental capacity issues from adult abuse and neglect; and provide clarity to families, informal carers and professionals as to when they may act or take decisions on behalf of those incapable of making such decisions themselves.

The *Act* made provision for the replacement of the previous system of Enduring Power of Attorney (which covered financial and property affairs) and Receivership under the Court of Protection, with a Lasting Power of Attorney and the new role of Deputy under the Court of Protection. As a result, from 1st October 2007, as well as being able to choose someone to take financial and property related decisions on your behalf, you can now also choose someone to take welfare and healthcare decisions by using a Lasting Power of Attorney.

Existing Enduring Powers of Attorney are still valid under the new legislation. It is also possible to replace an Enduring Power of Attorney with a Lasting Power of Attorney if you have the capacity to make the decision yourself.

Age Concern Factsheet 22, *Arranging for others to make decisions about your finances or welfare*, has more detailed information on Powers of Attorney and the role of the Deputy under the *Mental Capacity Act 2005*.

Advocacy for older people: Someone you know may need to enter a care home, but may have difficulty expressing their views or making decisions for themselves. It is important to try to represent the person's point of view as well as possible. Sometimes this might involve friends or family speaking on behalf of the resident; or, in some areas, there may be an advocacy scheme where someone external to the resident becomes involved. Advocacy schemes may be run by the local authority, or by local organisations such as local Age Concerns. However, they are not available everywhere.

Your local authority should be able to tell you whether or not there is such a scheme in your area, if you think this would be helpful. In this context an 'advocate' is not a legal representative (and has none of the legal powers set out within the *Mental Capacity Act 2005* above): instead they try to find out as much as possible about the person so that the person's views can be represented. This can sometimes be helpful in situations where families and friends disagree amongst themselves about what the person's views might be, or what acting in the person's best interest actually means. However, the Government's guidance to local authorities does not specify what procedures they should take when assessing people who do not have someone to act for them.

12. Sorting out problems: the local authority complaints procedure; the Commission for Social Care Inspection

Every local authority must have a formal complaints procedure, and must make information about this publicly available.

If you have a problem with the care assessment, or the assessment of how much you should pay, and you cannot resolve this with the staff concerned, you should use the complaints procedure.

Concerns about standards or treatment in a home should be taken up first with the staff or manager of the home or, if more serious, with the local authority or with the office of the Commission for Social Care Inspection, which is responsible for the inspection and registration of care homes.

The Government plans to integrate the Commission for Social Care Inspection, the Healthcare Commission and the Mental Health Act Commission into a new social care and health regulator called the Care Quality Commission. This is intended to be achieved by October 2008, with full powers being taken on in April 2009.

It may also be appropriate to take a local authority complaint that has not been satisfactorily resolved to the Local Government Ombudsman (LGO). They investigate complaints of injustice arising from maladministration by local authorities. The LGO is an independent, impartial and free service. The LGO can investigate complaints about how a local authority has acted. But they cannot question what a local authority has done simply because someone does not agree with it.

13. Paying for your care yourself

You are free to find a place in a care home yourself, if you can make your own arrangements and pay the fees. If you want the NHS to pay for your nursing care (see Section 2) you will need an assessment to establish your eligibility for this funding. Further information is available in Age Concern Factsheet 20, *NHS continuing healthcare, NHS-funded nursing care and intermediate care*.

You may be able to claim Attendance Allowance if you are not receiving assistance from the local authority. NHS payments for registered nursing care do not affect your right to receive AA/DLA (care component). Depending upon your capital and income you may also be able to claim Pension Credit.

If you have savings of more than £22,250 you will be expected to pay the fees for your accommodation and personal care in full yourself until your savings drop below £22,250.

If you are self funding but your capital is falling towards £22,250 approach the local authority and ask for an assessment of your care needs. This may take some time to arrange so it may be worth approaching the authority a few months before your capital reduces to £22,250.

Local authorities have been told that in this situation they must undertake an assessment as soon as is reasonably practicable, and if necessary take over the arrangements to ensure that the resident is not forced to use up capital below the upper limit.

The Department of Health has advised that authorities may be liable to reimburse residents for extra expenditure incurred as a result of the authority delaying in making arrangements²⁸.

If the home in which you have been self funding costs more than the local authority is usually prepared to pay for that type of care this may cause difficulties if you have to apply for local authority assistance later on. The local authority may require a third party to make up the difference and, if none is available, suggest that you move to a cheaper home.

If it is suggested that you move, ask the authority to carry out an assessment of the risk of this being detrimental to your physical or psychological well-being.

If you moved into a care home in a different local authority area from where you lived before and have since been self funding, the local authority in whose area you now live will usually be responsible for assisting you. It is generally difficult to obtain firm assurances from a local authority as to what assistance it might provide in the future.

14. Further information

The following organisations may be able to provide you with some additional information or advice:

Carers UK, 32-36 Loman Street, Southwark, London, SE1 OEE. Tel: 0207 922 8000, fax: 0207 922 8001. Web address: www.carersuk.org. General help and advice for all carers.

Counsel and Care, Twyman House, 16 Bonny Street, London NW1 9PG, tel: 0845 300 7585 (lo-call rate), website: www.counselandcare.org.uk. A charity which provides advice for older people, their families and professionals on community care and other issues.

²⁸ LAC(2001)25.

The Department of Health, produces a public information booklet entitled *NHS continuing healthcare and NHS-funded nursing care*. Copies can be obtained by quoting *284074/NHS continuing healthcare and NHS-funded nursing care* and contacting:
DH Publications Orderline, PO box 777, London, SE1 6XH.
Email: dh@prolog.uk.com, Tel: 08701 555 455, Fax: 01623 724 524
Textphone: 08700 102 870 (8am to 6pm, Monday to Friday)

Elderly Accommodation Counsel, 3rd Floor, 89 Albert Embankment, London SE1 7TP, telephone advice line: 020 7820 1343, website: www.HousingCare.org. Elderly Accommodation Counsel is a registered national charity, founded in 1985, to provide information on all forms of accommodation, support and care for older people. Staff offer guidance and advice to help enquirers choose and finance accommodation most suited to their needs.

The charity also maintains a detailed nationwide database of all forms of specialised accommodation for older people – sheltered and retirement housing to rent, buy or part buy, extra care housing, care homes and nursing homes.

Relatives & Residents Association (The), 24 The Ivories, 6-18 Northampton Street, London N1 2HY, tel: 020 7359 8148, advice line: 020 7359 8136, website: www.relres.org. The Relatives & Residents Association gives advice and support to older people in care homes, their relatives and friends.

The Association is committed to improving the standards of care in a care home through the active involvement of residents and relatives. Its aim is to promote a common understanding between relatives, residents, home providers and staff. A number of local groups exist across the country; contact the Relatives & Residents Association for more details.

15. Further information from Age Concern

The following factsheets/information sheets may be relevant:

- | | |
|---------------|---|
| Fact sheet 18 | <i>A brief guide to money benefits</i> |
| Fact sheet 20 | <i>NHS continuing healthcare, NHS-funded nursing care and intermediate care</i> |
| Fact sheet 22 | <i>Arranging for others to make decisions about your finances or welfare</i> |

Fact sheet 29	<i>Finding care home accommodation</i>
Fact sheet 34	<i>Attendance Allowance and Disability Living Allowance</i>
Fact sheet 38	<i>Treatment of the former home as capital for people in care homes</i>
Fact sheet 39	<i>Paying for care in a care home if you have a partner</i>
Fact sheet 40	<i>Transfer of assets and paying for care in a care home</i>
Fact sheet 48	<i>Pension Credit</i>
Info sheet IS/13	<i>Care Home Funding and Attendance Allowance</i>
Info sheet IS/25	<i>Choice of Accommodation - Care Homes</i>

Age Concern England's annual publication *Your rights to money benefits* gives more information about pensions, benefits and other kinds of financial help. It costs £5.99 and is available from Age Concern Books. To order, please telephone our hotline (9am-7pm Monday to Friday, 10am - 5pm Saturday): **0870 44 22 120** (national call rate), or visit our **website: www.ageconcern.org.uk/bookshop** (secure online bookshop).

If ordering by post, please send a cheque or money order, payable to Age Concern England, for the appropriate amount plus p&p to Age Concern Books, Units 5 & 6, Industrial Estate, Brecon, Powys LD3 8LA.

(Postage and packing: mainland UK and Northern Ireland: £1.99 for the first book, 75p for each additional book up to a maximum of £7.50. Free on orders over £250. For customers ordering from outside the mainland UK & NI: credit card payments only; please telephone the hotline for international postage rates or **email: sales@ageconcernbooks.co.uk**).

If you would like

- to find your nearest Age Concern
- any additional factsheets mentioned (a maximum of five may be ordered)
- a full list of factsheets and/or a book catalogue
- to receive this information in large print

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ. For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

Age Concern factsheets and other information materials can be downloaded free from our website at: www.ageconcern.org.uk. To receive a free e-mail notification when new and updated factsheets are published, please either contact the Factsheet Subscription Service on tel: 020 8765 7200 by email: factsheet.subscriptions@ace.org.uk, or sign up on-line.

Age Concern provides factsheets free to older people, their families and people who work with them. If you would like to make a donation to our work, you can send a cheque or postal order (made payable to Age Concern England) to the Personal Fundraising Department, ACE Freepost CN1794, London SW16 4BR.

Find out more about Age Concern England online at:
www.ageconcern.org.uk

Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age Concern. Whilst every effort is made to ensure accuracy, Age Concern cannot be held responsible for errors or omissions.

No factsheet can ever be a complete guide to the law, which also changes from time to time. Therefore please ensure that you have an up to date factsheet and that it clearly applies to your situation. Legal advice should always be taken if you are in doubt. (*Age Concern England does not give financial or legal advice*).

All rights reserved. This factsheet may be reproduced in whole or in part in unaltered form by Age Concern Organisations and Groups with due acknowledgement to Age Concern England. No other reproduction in any form is permitted without written permission from Age Concern England.

Communications Division, Age Concern England, Astral House, 1268 London Road SW16 4ER. Registered charity no. 261794

MR/LAE
FS10/08/04/01/AM045/AM046/AM047/AM049