

Information Sheet

10 Paying for Your Care Home

This information sheet tells you how your local council and the NHS can help you pay for a place in a care home. It explains the rules for working out how much you have to pay towards the cost of your care. It also looks at some common problems people have with getting local council funding.

Information on applying for a place in a care home, and on choosing a suitable home, is given in our free advice leaflet, *Care Homes*. You might find it helpful to read the leaflet and this information sheet together for comprehensive information on entering and paying for a place in a care home.

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- The rules on funding apply to England, Wales, Scotland and Northern Ireland, unless we indicate otherwise.
- Where we say ‘local council’ or ‘social services’ this means local health and social services trust for people in Northern Ireland, or social work department in Scotland.
- All homes in England, Scotland and Wales are now called care homes, rather than residential or nursing homes. But care homes still have specific levels of care that they can offer: for example, some care homes just provide personal care and others are able to offer more intensive nursing care by trained nursing staff.
- In Northern Ireland, care homes are called either residential or nursing homes.

In this information sheet we sometimes refer to pieces of legislation, court cases and government guidance. Most people will not need to know about these to get the help that they need. But if you do come across difficulties you may find it useful to quote the source of your information. We have listed the main sources of legal reference in information sheet no. 18, *Community Care: Legislation, Guidance and Case Law*. You can get a copy by contacting the Information Resources Team at the address on the last page.

The rules on funding a place in a care home are very complicated. Unfortunately we cannot discuss every possible situation in a short information sheet. If your circumstances are not covered here, please get further advice from our free advice service, **SeniorLine**, on **0808 800 6565 (0808 808 7575 in Northern Ireland)**.

Who pays for care in a care home?

There are different ways of paying for your stay in a care home, with the full cost often being met by contributions from different sources. The most common sources of funding are:

- The local council social services department, which is responsible for funding most older people in care. The amount of help you will get from your local council depends on your finances.
- Some residents receiving nursing care may have some or all of their nursing care fees paid for them. England, Wales, Scotland and Northern Ireland all have different systems. See pages 13–16 for more details.
- Individuals may also have to contribute towards the cost of their own care.

There are other ways of paying for care in a care home which are less common:

- Some people may meet the criteria to have their care fully paid for by the NHS. See page 17 for more details.
- People detained under some sections of the Mental Health Act may get free care in a care home. See page 17 for more information.

Alternatively, if you can afford it, you may decide to pay for your place in a care home yourself – see page 22.

Local council funding

Before you can get help with funding a place in a care home, you must have your needs assessed by your local council. This **care assessment** is about the care you need and is not based on your finances.

When a local council assesses your needs it will be using its own rules to decide who qualifies for a care home place. Each local council can consider how much money it has available in its budget when deciding how strict those rules will be. You can ask to have a written copy of these rules; they are often referred to as ‘eligibility criteria’.

If the local council decides that you do **not** meet its criteria for a place in a care home it is not obliged to fund you, regardless of how much or how little money you have. But it must then consider whether it has to offer you help at

home (see our free leaflet, *Help in Your Home*, for more information). If you disagree with your local council's decision, you can use the local council complaints procedure – see page 27 for more information on this.

If the local council decides that you do meet its criteria, it will carry out a **financial assessment** to decide how your care home fees will be paid:

- If the local council assesses your finances and decides that you can pay the full fees, it will probably give you a list of suitable homes in the area and will expect you to arrange your own place. However, if you are not able to manage the process of finding a home: for example, because you are too frail, or you don't have someone who can help you, the local council must arrange a place for you. You will still have to pay the full fee.
- If the local council decides that it will be paying towards your place in a home, it should tell you the amount that it will pay and give you details of homes in the area that are within its price range. The limit that it sets should be realistic. If you are unable to find a home to meet your needs within the local council's price limit it should increase its limit. If the local council won't increase this limit you may need to use the local council complaints procedure – see page 27.

For more information on working out how much of your care home fees you will have to pay yourself – see page 6.

Non-means-tested help

If you are assessed as needing **nursing care** you will get help with the costs of your nursing care in a care home regardless of your finances. In Scotland, you will also get help with the costs of your personal care in a care home. This means that if you are paying all or part of your care home fees, you could see a reduction in the amount you have to pay. See pages 13–16 for a more detailed explanation of the different systems in England and Wales, Scotland and Northern Ireland. Some people should get all their care funded by the NHS – see page 17.

Your care assessment plays a major role in the funding process. For more information on what to expect and things to think about before having the assessment, see our advice leaflet, *Help in Your Home*.

Choice of home

Even if the local council is funding you, this does not mean that it will decide which home you go into. Government guidance to local councils states that you can choose any home as long as:

- your chosen home has a place available; **and**
- it meets your assessed needs; **and**
- it will not cost the local council more than it would usually expect to pay for someone with your assessed needs (although it may be possible for someone else to top up your fees, see page 21); **and**
- the home is willing to contract with the local council under its terms and conditions.

The local council cannot set an arbitrary limit on the amount it is prepared to pay for a place in a care home. It must consider each case separately, taking into account all your assessed needs. For example, if you have dementia, you may be assessed as needing a specialised care programme; or if you do not speak English, you may be assessed as needing a home where staff can communicate with you in your own language.

If the only home available to meet your assessed needs is more expensive than your local council would normally pay, the local council should meet the extra cost.

If you receive funding from your local council, it should continue to fund you up to its usual limit even if you move to a home outside its area. This can be difficult for people who want to move to a more expensive area. In this type of case, the only way that a local council would be legally obliged to pay more than its usual limit would be if the move was recommended as part of your assessment. For example, it may have been part of your assessment that one of your psychological needs is to be close to your family.

If you want to move between Scotland and England or Wales, or vice versa, your local council should be able to make special arrangements with the council that you wish to move to. But you will be assessed under the funding rules for the country and local council you are moving **from**. If you are in Northern Ireland, you can move to a care home in England, Wales or Scotland, but it's complicated. Contact **SeniorLine** on **0808 808 7575** for more advice.

Paying for a place in a care home

The cost of a place in a care home will vary depending on where it is and the services and facilities it offers. In local council homes, the local council is legally obliged to set a fee based on the actual cost of running the home. In private homes, fees are set by the home owner, while fees in voluntary sector homes are set by the voluntary organisation.

If your local council has agreed that you need to move into a care home and you are getting local council funding, it is responsible for paying the fees directly to the home. If you are contributing part of the fees, you will have to refund this amount to the local council. This means that usually **you** will not be paying anything directly to the home. However, if you prefer to pay your share of the fees directly to the home, this can be arranged as long as you, the person managing the home and the local council all agree to this.

The rules for working out how much of the fee you will pay yourself are based on two things: your **savings and capital** and your **income** (the money you have coming in each week).

When assessing your capital and income the local council should look only at **your** income and capital, **not** the income of your partner or any other relative. Even if you live with your partner in the same care home you **must** be assessed separately and the income and savings rules will apply to you as individuals **not** as a couple. However, under separate rules, your spouse may be asked to make a contribution to the cost of your care – see pages 19–22.

Rules on savings and capital

The savings limits in England, Wales, Scotland and Northern Ireland usually go up every April. The savings limits in 2008–09 for each country are as follows:

Upper limits

England and Northern Ireland – £22,250

Wales – £22,000

Scotland – £21,500

Lower limits

England and Northern Ireland – £13,500

Wales – £19,000

Scotland – £13,000

If you have **more than the upper limit** in capital (which includes savings, stocks and shares, and property), you will be expected to refund the full cost of the fees. You will not be eligible to receive financial help from your local council until your savings are reduced to the upper limit.

If you have **less than the upper savings limit**, or when your savings drop to this level, then the local council will assess your ability to pay for your care by looking at both your capital and your income – see page 9 for more information.

Your property

If you own your own home, its value will usually be counted as capital. There are some important exceptions to this rule:

- Your property should be disregarded for the first 12 weeks after you enter into care **permanently**.
- If your **husband, wife or civil partner** (or unmarried partner) lives in your home then its value will not be counted as capital in the assessment.
- If a relative **aged 60 or over** lives in your home, its value will be ignored.
- If a relative **under** the age of 60 who is **incapacitated** lives there, then again the value will not be counted. (In general, someone could be judged to be incapacitated if they are receiving a sickness or disability benefit such as Incapacity Benefit or Disability Living Allowance.)
- If your home is occupied by your estranged or divorced partner and he or she is a lone parent with a dependent child, its value will be ignored.
- The value of your property should be ignored if you are liable to maintain a child under 16 and your house is the child's main home. The child must be either a relative of yours or a relative of a member of your family.
- The local council is also allowed to ignore the value of your property if it is the permanent home of someone who does not fall under these categories: for example, your carer. The local council is not obliged to do this, but can choose to use its discretion.
- If you are a temporary resident in a care home, the local council should ignore the value of your home. You can be classed as temporary for up to 52 weeks, possibly longer at the discretion of the local council – see page 12 for more information.

If you **jointly own** your home with someone who does not fit into any of these categories: for example, a relative under the age of 60 or a friend, things are

more complex. In this situation, the local council will designate a value to your **interest** in the property. This value depends largely on the price that your share of the property could realistically command from a 'willing buyer'.

However, if your co-owner is unwilling or unable to buy your share from you, your interest in the property could be held to be worth nothing. This is because it is very unlikely that an outsider would want to buy into a property when this would involve sharing it with someone else. If you disagree with how your share has been valued you can get a professional valuation and challenge the local council decision.

Deferred payments

The local council cannot force you to sell your home, but if you are unable to cover your care home fees the money you owe your local council will mount up. However, the local council can allow you to defer part of your contribution if you are unable or unwilling to sell your home and you do not have enough income or other assets to cover your full fees. The local council will effectively be giving you an interest-free loan. This will be paid back when your property is eventually sold, or when your estate is wound up.

This is called a **deferred payments agreement** and may involve having a legal charge placed on your property. The amount of money you owe will start to incur interest 56 days after your death or the date you terminate the agreement. The local council may ask you to cover the legal costs involved in placing a charge on your property, such as Land Registry searches. These have to be paid up-front and will not be added to your deferred payments.

Although the part of your contribution that is based on the value of your property can be deferred, you will still have to contribute any other income and assets you have towards the cost of your place in a care home.

In certain circumstances the local council may refuse to enter into a deferred payments agreement, in which case it must put its reasons in writing and you can complain about the decision. See page 27 for information on complaining to your local council.

You might find it more difficult to get a deferred payments agreement if you live in Northern Ireland. Your health and social services board can ask you to seek interim funding elsewhere: for example, from a financial organisation, but it cannot make you do so.

Spouse's main home

If your home is disregarded because your spouse or civil partner is living in it, there may come a time when they wish to sell the property and buy another; this could be because they want a smaller property or move to sheltered housing. If this happens your share of the proceeds could be taken into account, but if your spouse needs all the capital in the property to purchase another house, including your share of the capital, this is considered reasonable. However, if there is any capital left over, your share will be taken into account as savings.

Less than the upper savings limit in savings

If you have less than the upper savings limit the local council will assess your income and savings to decide how much you should pay towards your care home fees.

- Savings below the lower savings limit are ignored altogether.
- Savings between the lower and upper savings limits are converted into an assumed weekly income using a simple formula. This is often called **tariff income**. For every £250, or part of £250, you have over the lower savings limit, £1 per week will be added to your income.

For example, if you have £14,800 in the bank, then your weekly tariff income is set at:

- £6 in England and Northern Ireland because £1 is added for every £250 you have over £13,500
- £8 in Scotland because £1 is added for every £250 you have over £13,000
- £0 in Wales because £1 is added for every £250 you have over £19,000

Savings in the bank are just one form of capital; other things that are taken into account are stocks and shares, building society accounts, premium bonds, National Savings Certificates and property (both buildings and land). If you hold savings **jointly** with someone else, only your share will be taken into account. It will be assumed that your share is 50 per cent, regardless of what your actual share might be.

Local councils are not allowed to set their own capital limits for funding. For example, a local council might say it will only fund people with capital below £5,000. This is illegal. Our information sheet no. 27, *How to Make a Complaint*, gives details of how you can challenge the local council if you find

yourself in this position. Our free advice service, **SeniorLine**, on **0808 800 6565 (0808 808 7575 in Northern Ireland)** can advise on this issue.

Income

The local council works out your income by calculating the money you have coming in each week. This includes tariff income you have from savings, any pension you receive (whether State Retirement Pension or an occupational or personal pension) and money you get from state benefits, such as Pension Credit.

However, **some income is disregarded** (that is, ignored) by the local council when it is assessing your income.

A few benefits, including the mobility component of Disability Living Allowance and War Widows Special Payments, are **completely disregarded**. Others, including War Disablement Pension and War Widow's Pension are **partly disregarded**, up to a total of £10 per week.

Half of any occupational or personal pension you receive will also be disregarded by the local council, as long as at least half of this pension is passed on to your **wife, husband, or civil partner** who is still living at home. (Even if you pass on more than half your pension, the local council will only disregard half of it.) This disregard applies to occupational pensions, personal pensions and payments from a retirement annuity contract. If you are an unmarried couple you will not qualify for this disregard, but the local council might use its discretion to increase your personal expenses allowance – see page 18 for information on this.

If your partner or spouse is claiming means-tested benefits such as Pension Credit, Housing Benefit or Council Tax Benefit, this income will affect their benefits and they could end up worse off. For advice on this, contact our free advice service **SeniorLine** on **0808 800 6565 (0808 808 7575 in Northern Ireland)**.

Although Pension Credit is taken into account when you are being assessed, up to £5.45 of any savings credit you get will be ignored. This is called the **savings disregard**. If you are a couple, up to £8.15 will be disregarded. If you don't get any savings credit because you have too much extra income, you will get the full savings disregard. The savings disregard will be added to your personal expenses allowance – see page 18.

Benefits

Pension Credit

You can continue (or start) to claim Pension Credit when you move to a care home. Pension Credit tops up your weekly income to at least £124.05 if you are single (if one member of a couple is permanently in a care home they are treated as single), or £189.35 between you if you are a couple.

When the Department for Work and Pensions (DWP) is working out how much Pension Credit you should get, it looks at your weekly income. As well as the money you have coming in, such as your pension, it assumes that you get a weekly tariff income from your savings and adds this amount on. To work out your tariff income the Department for Work and Pensions will apply a different formula from the local council. It will assume £1 of income for every **£500** of capital you have above £10,000. Savings below £10,000 are ignored. (If you are a temporary resident, only savings below £6,000 are ignored.)

For example, Stan, aged 73, is a single pensioner living in a private care home and not receiving any disability benefits. His only income is his basic State Retirement Pension of £90.70. His savings are £5,800, which is below the £10,000 limit, so they are ignored. Therefore, Stan will be entitled to a Pension Credit payment of £33.35 to top up his income to £124.05.

Pension Credit is counted as income when your local council is working out how much you should pay towards your care home fees (apart from the savings disregard – see page 10). So your local council will want to make sure that you are claiming Pension Credit if you are entitled to it. This is because it will mean that it has to contribute less towards your fees, saving your council money.

Disability benefits

If you are receiving Attendance Allowance or Disability Living Allowance (care component) when you move into a care home and the local council is contributing to the cost of your fees, your Attendance Allowance or Disability Living Allowance (care component) will be stopped after four weeks. Your Disability Living Allowance (mobility component) is not affected when you move into a care home and you will continue to receive it.

However, if you are getting Attendance Allowance or Disability Living Allowance (care component) when you move into a care home and you are paying the full cost of your place yourself, without help from the local council,

you will continue to get your benefit. You can also claim Pension Credit without it affecting your Attendance Allowance or Disability Living Allowance.

If you are getting help from the local council to pay your fees under a **deferred payments** arrangement, but you will pay the local council back once you have sold your property, you can continue to claim Attendance Allowance or Disability Living Allowance (care component).

In Scotland, if you are claiming Attendance Allowance or Disability Living Allowance (care component) and getting help from the local council to pay for your personal care, your benefit will stop after four weeks.

If you would like more advice on how your benefits will be affected when you move into a care home, contact our free advice service **SeniorLine** on **0808 800 6565 (0808 808 7575 in Northern Ireland)**.

Temporary residents

If you are in a care home for a temporary stay, the local council is not obliged to do a full means test for the first eight weeks. It just has to charge a reasonable amount.

If it does a full means test it can't include the value of your home as capital. It also has to take into account liabilities that you still have for maintaining your home, such as standing charges for utilities, house insurance and Council Tax. If it does not allow you enough to cover these costs, you should use the local council complaints procedure – see page 27.

It should also ignore any benefits that you receive towards your housing costs such as Housing Benefit or any amount towards housing costs you receive as part of Pension Credit. In addition, it should ignore any Attendance Allowance or Disability Living Allowance you receive.

If you are a single temporary resident, the rules for Pension Credit are the same as if you were still living in your own home. However, if you are a member of a couple and you go into a care home on a temporary basis, you will still be treated as a couple for Pension Credit. When working out how much you have to pay towards the cost of your care, the local council has to leave the person still at home with enough to live on. If you are in this position,

you should get some advice from an advice service such as **SeniorLine** on **0808 800 6565 (0808 808 7575 in Northern Ireland)**.

Temporary absences from the home

It is up to the local council whether it will continue to fund your place in a care home if you are absent: for example, if you go into hospital. You should check your local council's policy on this before you go into care.

Help with nursing care costs

(and personal care in Scotland)

NHS funded nursing care in England and Wales

In this section, when we talk about your nursing home co-ordinator this means care home co-ordinator in Wales; and when we talk about your local Primary Care Trust this means health board in Wales.

If you live in a care home in England or Wales you may be able to get help with the cost of your nursing care. Before entering a care home you should arrange an assessment from your local Primary Care Trust (PCT) – see page 3–4. If your PCT thinks that you need nursing care, it should organise for you to be assessed by a registered nurse. If the nurse assesses you as needing nursing care, the NHS will pay an amount directly to the care home towards the cost of your nursing care.

- If you pay your own fees this should mean that you see a reduction in how much you have to pay.
- If most of your fees are paid by the local council the NHS will still contribute towards the cost of your nursing care, but the amount you pay will not be affected.
- If you pay part of your fees and the local council pays part of your fees, you may get a reduction. If you're in this position check with your local council or get advice from **SeniorLine** on **0808 800 6565**.

On 1 October 2007, **in England**, a new a two-tier rate system for nursing care replaced the old three-tier rate system. If you were an existing claimant, and already assessed as needing nursing care, prior to 1 October 2007, you would have needed to be reassessed so that you fitted into one of two new rates: standard or higher.

As from 1 April 2008, the amount the NHS will contribute, if you are assessed as needing the standard rate of nursing care, is £103.80. If you are assessed as needing the higher rate of nursing care, the NHS will contribute £142.80 towards your nursing care costs. (The amount that you will get for these two rates changes annually.)

If you live in Wales, the amount your care home will receive will be set by your local health board; some health boards may adopt a flat rate of £117.66 per week towards your fees.

Your care home has to give you a statement detailing how much the NHS is contributing to your nursing care and how this affects your fees.

Once you have been assessed by an NHS nurse you will receive regular reviews of your nursing care needs. The reviews should take place within three months of your assessment and then yearly. If, at any time, your nursing needs change, your care home should notify the NHS nursing home co-ordinator at your local Primary Care Trust.

If the NHS nurse decides that you do not require any nursing care the NHS will not be obliged to pay for it, and neither will the local council. If you still wish to go into a care home offering a high level of nursing care, you can only do so if you agree to pay for the nursing aspect of your care yourself.

If you disagree with the level of nursing care that you have been assessed as needing, you can ask to be referred to the Primary Care Trust continuing care panel for a review. If you are still dissatisfied, you can ask the Healthcare Commission for a further review.

If you are entering nursing care for a period of less than six weeks you will not need to have an assessment by an NHS nurse.

For the remaining part of your fees, covering personal care and accommodation costs, you will still be assessed under the rules on pages 6–12.

Our free advice service **SeniorLine** can give you advice on how these rules will affect your particular situation. Call free on **0808 800 6565**.

If you're assessed as needing nursing care, it is worth checking whether you have been properly assessed for fully-funded NHS care first – see page 17.

Nursing care contribution in Northern Ireland

If you are funding all or part of your nursing home fees you may be able to get help with the cost of your nursing care. Nursing care is care that is provided, delegated or supervised by a registered nurse.

First, you need to be assessed by a Health and Social Care trust (HSC) nurse. If they agree that you need nursing care, your local HSC trust will pay up to £100 a week towards your care fees, depending on how much you are contributing towards the cost of your nursing home.

- If you are paying the full cost of your fees and are assessed as needing nursing care, the HPSS should contribute £100 towards the cost of your nursing home.
- If the HPSS is already contributing something towards your nursing home fees, its contribution will be increased to £100.
- If the HPSS is already contributing more than £100 towards your nursing home fees, you will not get any extra help and will continue to pay the same fees.

The HPSS nursing care contribution will be paid directly to your nursing home. You should then see a reduction in the fee that you have to pay. Payment should be backdated to the date you first requested a nursing care needs assessment.

Your nursing care needs will be reviewed after three months and then every year after that.

If you disagree with the decision made by the nurse you have a right to a review of the decision. Ask the nurse about the review process.

You will not normally need to have an assessment of your nursing needs if you are entering nursing care for less than eight weeks.

You can get advice on these rules from our free advice service **SeniorLine** on **0808 808 7575**.

Help with personal and nursing care in Scotland

If you are paying all or part of your care home fees, and are aged 65 or over, you may be able to get help with the nursing and personal care part of your fees. If you are not yet 65, you will only get extra help with your nursing fees.

First, you need to have your care needs assessed by your local council (see page 3). If you are 65 or over and your local council agrees that you need **personal care** it will pay £149 a week towards your care. If you are any age, and you require **nursing care**, the council will pay an additional £67 a week. If you are aged 65 and over and your council agreed that you need personal care and nursing care, it will pay £216 a week towards your care. These payments will be made by your local council to your care home. You should then see a reduction in the fees you have to pay.

Personal care is defined as:

- help with washing, bathing and showering
- help with managing continence including using continence equipment such as catheters and stomas
- assistance with eating, managing special diets and preparing specialist meals such as puréed food
- help to move around indoors
- help with simple treatments such as applying creams, lotions and dressings.

Nursing care is defined as:

- care provided by a registered nurse or doctor.

You will still have to pay for normal accommodation costs which do not involve personal or nursing care, and your finances will be assessed to see how much you should pay. You should use the information on pages 6–12 as a guide to how much you are likely to be charged. For further advice contact our free advice service **SeniorLine** on **0808 800 6565**.

Fully-funded NHS care

Some people who have primarily health care needs may meet the criteria to have their care provided completely free by the NHS. This will depend on the quality or quantity of health care needed. This is referred to as **continuing NHS health care**. You should automatically be assessed for continuing NHS health care before you move into a care home that provides nursing care, or when you are being discharged from hospital. If you are being assessed for help with nursing care costs you should **first** be properly assessed for fully-funded NHS care.

Following two very significant court cases – the Coughlan case in 1999 and the Grogan case in January 2006, which caused much discussion about who is entitled to fully-funded care, national eligibility criteria for continuing NHS health care were introduced in October 2007. These criteria look at eleven different ‘care domains’: for example, behaviour, continence and mobility, and, depending on the level of care needed in each of these areas, fully-funded care may be awarded.

If you feel that you have been refused continuing NHS health care unreasonably you should use the NHS complaints procedure to ask your Primary Care Trust (PCT) to reassess your case against the national criteria.

If you do qualify for an NHS fully-funded care home placement, the NHS will decide which home you will move into. You can ask to move into a particular home and your wishes should be taken into account, but the NHS has the final say. Your state pension and benefits will be affected in the same way as if you were in hospital – see our information sheets no.14, *Going into Hospital*, and no. 22, *Coming out of Hospital*.

Free care under the Mental Health Act

Some people in England and Wales who have been detained in hospital under certain sections of the Mental Health Act 1983 will be entitled to receive free ‘after-care services’. This can include care home accommodation.

A local branch of the organisation **MIND** can advise people in this position. Call MIND on **0845 766 0163** for details of your local group.

Your contribution

Your local council must take your savings and income into account when working out how much you will have to pay towards your fees. When assessing your contribution, the local council must always leave you with a sum of money for your personal expenses. This sum, called your **personal expenses allowance**, is set by the Government each year. This year it is:

- **£21.15** a week in England, Scotland and Northern Ireland
- **£21.38** a week in Wales.

Any income you have over this level will go to the local council to cover your care costs (apart from disregarded benefits and income – see page 10). You should never pay more than the actual amount of the fees to the local council, and you should never be left with less than £21.15 a week for your personal expenses (or £21.38 if you live in Wales).

So, for example, if your weekly income is £240 and the care home's fees are £350 a week, you will keep £21.15 (£21.38 in Wales) and pay the remaining £218.85 (218.62 in Wales) to the local council. The rest of the fees – £131.15 (£131.38 in Wales) – will be paid by the local council.

Your local council also has the discretion to **increase** your personal allowance above the minimum of £21.15 (£21.38 in Wales) a week, for example:

- to make more money available to your partner if he or she is still living at home (but this might not always be appropriate because increasing income in this way can sometimes mean that the person still at home may get less benefit); or
- if you are experiencing hardship and, because of your lack of income, are unable to live as independent a life as possible.

If you feel this would be helpful in your case, raise the matter with your local council or ask **SeniorLine** for advice.

Your local council should tell you how it has worked out how much you should pay towards the cost of your care fees. **Ask for this information to be given to you in writing.**

Who else is responsible for paying?

Your local council will assess **your** savings and income to work out how much you will have to pay towards the cost of your care. The savings or income of your spouse or partner should **not** be taken into account when working out how much you have to pay; you should be assessed solely on the value of your own resources. Where you have joint savings, only your share of these savings should be taken into account. It will be assumed that you own a 50 per cent share regardless of what your real share might be.

However, under separate rules, in **England, Wales and Northern Ireland**, the local council can approach your spouse to see if they are willing, and able, to make some payment towards the cost of your care. No other relative or member of the family can be asked to contribute. Only your husband or wife is classed as a **liable relative** in this way. If you have registered a civil partnership, you will **not** be affected by this rule and your civil partner will **not** be required to contribute. In **Scotland** the 'liable relatives' rule was abolished from 5 October 2007. If you live in Scotland your husband or wife cannot be approached to make payments towards the cost of your care.

The law on liable relatives in **England, Wales and Northern Ireland** is likely to change to follow Scottish law but no date has been given for this. The Department of Health is recommending that before the law changes local councils do not ask spouses for a contribution.

The local council does not have a legal right to assess your husband or wife's income and assets. If it wants your spouse to make a payment, the local council has to ask him or her to agree to a sum that they can afford to pay. There are no national guidelines as to how this amount should be worked out. Your local council should come to an agreement with your spouse about what they can afford through negotiation.

If your husband or wife doesn't agree to make a payment, or will not agree to a particular amount, your local council will have to go through the courts in an attempt to set a 'reasonable' amount. Usually, court action will only be taken as a last resort, where it is very clear that your spouse can afford to make a contribution without hardship but does not wish to do so.

It is important to note that even if the requested payments are not being made, the local council still has an obligation to provide the care you have been assessed as needing.

Giving away assets

Sometimes people ask whether it is possible to give away their home or savings so that they do not have to pay for their place in a care home. If you are considering this, it is important, not only to be aware of the legal situation, but to think about the implications for you of giving away property or savings. Although the legal situation is complex, the primary points are as follows.

It is illegal to make over property or savings to another person in order to qualify for financial help from your local council. This is called **deprivation of assets**. If your local council believes that you have deliberately given away assets in order to reduce or avoid care home fees, it has the power to treat you as still having those assets – known as **notional capital**.

There is no set time limit within which giving away property or savings is treated as deprivation of capital. However:

- If the transfer took place **up to six months** before you moved into the care home, the local council may try to claim the fees from the person you have given your assets to.
- If the transfer took place **more than six months** before you moved into the care home, the local council may consider whether it is possible to recover the fees from you personally. This means that you could be given a bill for your home fees, even though you don't actually have the money any more.

The local council will be more interested in the intention behind any transfer of assets than how long ago the transfer took place. If a main reason was to avoid paying for care fees it might investigate, even if the transfer took place a few years ago.

If this does happen to you, it is not entirely clear how the local council would go about pursuing this debt, although there would appear to be a number of routes open to it. This reinforces the importance of getting expert legal advice if you're thinking about transferring savings or property to someone else.

Although it is important to investigate the legal aspects, it is also vital to look at the other ways in which a transfer of assets could affect you. You may feel that you are protected if you pass your home to your children or other members of your family. However, you may have no legal rights if things change in the future. It is not safe to assume that you will still have access to your house and

the money tied up in it if you sign it over to someone else. For example, the person you have passed your property to could be declared bankrupt, get divorced, become disabled or die; any of these things could mean that the home you have given to them is at risk. Just over four per cent of people over 65 live in care homes; this is significantly lower than the likelihood of a son or daughter's marriage ending in divorce.

You also need to think about whether you are placing limitations on what you can do in the future. For example, at some stage you may want to sell your home and buy a smaller property or a house in a sheltered scheme. This might not be possible if your home is in someone else's name. It is not always safe to assume that the person you have passed your home to will be willing to sell when you want them to.

If you have a lot of capital, perhaps because you have sold your home, you may find it helpful to get expert financial advice on investing it to help pay for your care. **Help the Aged Care Fees Advice** service is designed to help you to plan your finances so that you can meet the costs of paying for care – see page 28 for contact details. Alternatively, you may wish to consult your own financial adviser or solicitor.

As the majority of older people do not move into a care home, but carry on living independently, you may want to think about holding on to your home and capital, and maintaining your independence and control over your own money.

If you are thinking about transferring your assets you should **seek professional financial and legal advice** before making a decision.

Third party top-up payments

Your local council can only ask a third party: for example, a relative or friend, to top up your fees if:

- you choose to move to a different care home from the one offered to you by your local council; **and**
- the fees are more expensive than your local council would normally expect to pay for someone with your needs.

A third party should not be asked to top up your fees if the only accommodation that is available to meet your assessed needs is more expensive than your local council would normally pay.

If you do want to move to a home that costs more than the local council would normally pay it may be possible to argue that this is the only home that is suitable for your assessed needs. If your local council agrees that this is the case, it should pay the extra fees.

Alternatively, someone else may agree to pay a top-up to make the fees up to the required level. This may be a relative: for example, a son or daughter, or it could be a charity. If this is a possibility for you, it is important to check what will happen if the fees go up in the future. Who will be responsible for meeting the costs? Will the third party undertake to cover the costs, or will the local council take some responsibility? An agreement must be reached between the local council and the third party helping to pay your fees before any contract is signed.

It is not usually acceptable for you to top your fees up from your own savings or personal expenses allowance. However, in England, Scotland and Wales there are two exceptions to this rule:

- if you have a deferred payments agreement with your local council; **or**
- if your property is being disregarded for the first 12 weeks of entering into care.

At the moment, in Northern Ireland, you will not be allowed to top up your own fees in these circumstances but this may be open to challenge. Check with **SeniorLine** on **0808 808 7575**.

Information on getting financial help from charities is given in our information sheet no. 6, *Financial Help from Benevolent Societies*.

Paying for care in a home yourself

You don't have to go through the local council's assessment process if you can afford to pay for a place in a home yourself, and you are able to make all your own arrangements. You can approach the home you would like to live in directly and sort out the financial arrangements yourself.

However, you may wish to consider seeking advice from your local council before going ahead. There may come a point when you can't afford to pay the fees (when your savings fall to the upper savings limit or less) and you need to seek financial help from your local council. The local council's assessment

procedures would then be applied. If you haven't already had a community care assessment, you will need to ask your local council to organise this for you. Its assessment of your needs might not include paying for your chosen home. You may want to find out how the local council looks on such cases before making a decision on arranging and paying for your care home.

If your care home costs more than the local council would normally pay, the local council may say that:

- you will have to move to a care home that costs no more than they would normally pay; or
- a third party: for example, a relative or friend, will have to provide a top-up payment to make up the extra cost of your care home.

However, your local council should take into account your specific needs. You can ask it to reassess your needs, taking into account any special reasons why you may need to remain in the home you are currently in. If there are reasons why your needs are better met remaining where you are, the local council should meet the extra cost. When your needs are being assessed, remember to make clear any reasons why you think your needs are best met by staying in your current home.

If you are self-funding and move to another area, and begin to need help with funding, you will need to apply to the local council for the area that you have moved to. It will assess your needs against its own eligibility criteria.

Problems with local council funding

Help the Aged has received many phone calls and letters from people who have been assessed as needing to move into a care home by their local council, but have been refused financial help with the fees. Some local council decisions to refuse funding are legitimate, but others go against government guidance and legislation.

To help clarify which decisions taken by local councils are not legitimate, the following case studies illustrate the common ways in which local councils ignore government guidance and legislation.

The case studies are based on calls to Help the Aged, but the names have been changed to protect confidentiality. If your situation is not covered, or you need

more in-depth advice, contact **SeniorLine** on **0808 800 6565 (0808 808 7575 in Northern Ireland)**.

Case study 1: Mrs Adams is told her capital is above the limits

Mrs Adams is currently in hospital. She has been assessed by social services as needing residential care and her daughter has found a suitable home for her to move into. The social worker has told Mrs Adams that she will have to pay the home fees herself because she has £8,000 in savings. The local council says it will only pay the fees when Mrs Adams' savings have gone down to £1,000. Mrs Adams' daughter rang Help the Aged to find out if this is correct.

The local council is wrong. Mrs Adams should keep all of her £8,000 savings. Her £8,000 is less than the lower savings limit and should be ignored completely when the local council is working out how much she should pay. See page 6 for the rules on savings and capital.

In 1997, Help the Aged discovered that Sefton Metropolitan Borough Council was forcing people to wait for residential care funding until their savings had fallen to £1,500. Help the Aged took Sefton MBC to court, and it was found to have acted unlawfully by the Court of Appeal. In the judgement, it was stated that local councils are not allowed to operate their own scale when deciding who qualifies for residential care funding. It was also stated that local councils cannot use lack of resources as an excuse for not providing financial assistance with residential care.

Case study 2: Mr Shah is told funding isn't available for the home he has chosen

Mr Shah has been assessed as needing to move into a care home. He is given a list of homes and is told that the local council will usually pay up to £300 a week for someone with his assessed needs. After visiting a few homes with his daughter, he finds one he likes. The cost of the home is £290 a week. When he tells his social worker that he has found a home, the social worker tells him that, unfortunately, it cannot fund a place in the home he has chosen. It will, however, pay for a place in another home, run by the local council, which costs £285 a week. Mr Shah's daughter thought this was unfair and rang Help the Aged.

The local council is wrong. It cannot force Mr Shah to move into the local council-run home and should pay for the place in the home of his choice. See page 5 for more information about your right to choose a home.

Case study 3: Mr Edwards is told that his case is being referred to an 'allocation panel' Mr Edwards is visited at home by a social worker who carries out an assessment of his needs. The social worker advises Mr Edwards that he meets the criteria for a place in a care home, but the decision about whether funding will be available for this will be made by an allocation panel which meets every month. This panel is made up of councillors who have to decide how many places in care homes can be funded.

This practice is unlawful and Mr Edwards would be advised to challenge this. A 1998 case known as Tammadge established that it was unlawful for a meeting attended by councillors to override the decision of the council's 'own professionally qualified staff and advisers'.

Case study 4: Miss Clough is told there is a waiting list for funding

Miss Clough has been living in a care home for four years. When she was originally assessed as needing to move into a care home she had capital of £73,000, so she paid the home fees herself. She was told that once her savings fell to the level of the upper capital limit (currently £22,250 in England), the local council would help her with the fees.

Her savings have now fallen to £22,250 and the manager of the home contacted social services on her behalf. A social worker visited Miss Clough and said that although she still needed care, it would not be able to help with the fees because of 'budgetary constraints'. The social worker said there were 36 other people who were worse off than Miss Clough and they would get funding before Miss Clough. The social worker could not say when Miss Clough would get help with her fees.

The local council should not be operating a waiting list. Miss Clough should get help with her care home fees as soon as her capital falls below £22,250.

Local councils should follow government guidance, which states that when a person is in residential care and their capital falls to £22,250 (£21,500 in Scotland and £22,000 in Wales) the local council should provide help with the fees as soon as it is aware of the resident's circumstances. If it fails to do this it is not meeting their statutory duty to provide care 'without undue delay'.

The local council can recoup some of the cost from the person's income and savings, **but** savings below £13,500 in England, (or £13,000 in Scotland and £19,000 in Wales) should be ignored and left untouched.

Case study 5: Mrs Cochrane is told that the market value of her share in a jointly owned property counts as capital

Mrs Cochrane has been assessed as needing to move into a care home. She and her daughter Lucy have joint ownership of their current home. Her local council has told her that she will have to pay all her care fees because the market value of her share in the property takes her capital above the upper limit. They can't sell the house, because Lucy would then lose her home; but Lucy can't afford to buy Mrs Cochrane's share in the property so it will be very difficult for Mrs Cochrane to pay for her care home fees. She called SeniorLine in Northern Ireland for advice.

The local council is wrong. It should be basing its financial assessment on the value of the **interest** that Mrs Cochrane has in her property, not on the market value of her share. Mrs Cochrane can get a professional valuation and challenge the local council decision.

However, there are some cases where a local council's refusal to fund is legitimate, as in the following example.

Case study 6: Mrs Davies has moved to a care home in Scotland

Mrs Davies moved from a care home in England to a care home in Scotland to be closer to her daughter. Mrs Davies was assessed as needing to live in a care home, but because she has some savings she was paying her full fees in England. Her daughter assumed that when she moved to Scotland she would get the £149 payment that local councils in Scotland pay towards the personal care costs of care home residents. When she was told this wasn't the case, she called Help the Aged.

In this case, unfortunately, the local council is right. Mrs Davies will continue to be the responsibility of her old local council in England and isn't eligible for the £149 personal care payment. Once her savings fall below the upper limit, she should get help with her fees from the local council in England.

For details of the guidance and legislation that local councils should follow see our information sheet no. 18, *Community Care: Legislation, Guidance and Case Law*, or call SeniorLine.

Making a complaint

You can challenge your local council if you disagree with a decision it has made.

- You can make a complaint using the **local council complaints procedure**. If you request information on the procedure you should be given a leaflet that tells you how to go about it. Most complaints procedures follow the same process, which involves an informal stage, a written stage, and an independent review. There are set time periods for the different stages. If you are still not happy, you can take your case to the ombudsman.
- You can make a formal complaint to your local council's **Monitoring Officer** as an alternative (or in addition) to using the local council's complaints procedure. This may get a quicker result.
- You can take your case to court by applying for a **judicial review**. This is a request to the High Court to consider whether a decision of the local council is fair and reasonable. However, this can be very expensive if you do not get legal aid.
- You can ask your **local councillor or MP** to take up your case.
- You can get advice and support from an **independent advocacy service**.

For more information on making a complaint see our information sheet no. 27, *How to Make a Complaint*.

Useful contacts

Alzheimer's Society

Devon House
58 St. Katherine's Way
London E1W 1JX
Helpline: 0845 300 0336
Web: www.alzheimers.org.uk

Help the Aged Care Fees Advice

FREEPOST LON18542
Oxford OX29 4BR
Freephone: 0500 76 74 76

Free financial advice on the best ways of paying for care.

The Relatives and Residents Association

24 The Ivories
6–18 Northampton Street
London N1 2HY
Helpline: 020 7359 8136
Web: www.relres.org

The Relatives and Residents Association is a charity set up to support residents of care homes, and relatives of people living in care homes. It operates a telephone helpline, and has a network of local groups.

For further information contact:

Information Resources Team
Help the Aged
207–221 Pentonville Road
London N1 9UZ
Tel: 020 7278 1114

If you have access to the internet you can download our advice leaflets and information sheets by logging on to **www.helptheaged.org.uk**

SeniorLine is the free welfare rights advice and information service run by Help the Aged for older people and their carers. Trained advice workers offer free, confidential and impartial advice about:

- welfare and disability benefits
- care at home
- residential care
- housing options and adaptations
- access to health and community services.

Freephone: **0808 800 6565**

Textphone: **0800 26 96 26**

9am to 4pm, Monday to Friday

If you are in **Northern Ireland**, contact **SeniorLine** on **0808 808 7575**.

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