

	July 2006 Scotland
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Key Points:

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| <ul style="list-style-type: none">• Replaces previous version dated June 2005 |
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Local authority charging procedures for care homes

This factsheet describes the financial help which may be available from the local authority for older people needing care in a care home. A new edition of this factsheet will be produced in April 2007

The factsheet is separated into sections explaining the different procedures for temporary and permanent residents. **This factsheet is for people living in Scotland.**

There are significant differences between the rules for local authority funding in Scotland, England and Wales. Readers living in England can obtain a

similar Factsheet 10, *Local authority charging procedures for care homes*, and readers living in Wales can obtain a similar Factsheet 10w, *Local authority charging procedures for care homes* available by telephoning: 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ.

Contact details for Age Concern Wales 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 to Friday 9.30am to 1pm,
website: www.ageconcernni.org.

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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. Although the factsheet is long, it is designed to answer the majority of enquiries from older people.

We use a number of terms in this factsheet which may not be familiar to you. These are phrases or words which you will find used commonly when you seek financial help towards the cost of your place in a home. We have also given references, in the form of footnotes, to particular parts of legislation and guidance which may be helpful for you to know.

When reference is made to the 'local authority' or 'Council' in this factsheet it means the **social work department** of the local council. The Council is responsible - amongst other duties - for assessing people's need for 'community care services', arranging and providing these services, and providing financial support for those who need places in care homes. You can find their number in your telephone directory under the name of your local authority (for instance Glasgow City Council, or Highland Council). Alternatively, your town hall or local authority offices will be able to tell you how to contact social work services, or you could contact your local Citizens Advice Bureau or the local Age Concern organisation. Your local authority is the one in which you live.

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

The **National Health Service in Scotland or NHS Scotland** is responsible for the delivery of health services. NHS Scotland is divided into separate NHS Board areas, each serving a different part of the country. NHS Boards have certain responsibilities for meeting the health needs of their local population through services such as GPs, dentistry, district nurses and NHS Scotland hospitals. Your NHS Board area may be different from your local authority area - these two bodies often have different boundaries but do work together in many ways to provide the care and support needed. You can find out details of your NHS Board by asking your GP or Citizens Advice Bureau or by telephoning the NHS 24hr helpline: 08454 24 24 24 (lo-call rate).

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 term '**care home**' is used in this factsheet to mean any home that is registered with the Scottish Commission for the Regulation of Care, also known as 'The Care Commission'.

It includes local authority homes and independent homes (private and charity run homes), some of which provide nursing care as well as personal care.

The information in this factsheet is correct as of July 2006. A new version will be issued in April 2007. Please note that there may be some changes to rules and figures in the intervening period.

2. Who pays for the costs of a place in a care home?

Most people will be expected to pay towards the costs of their accommodation in a care home from their income and capital. There are a number of bodies that may have a duty to pay towards the costs of care home places. In order to receive any financial assistance that may be available to you from your local authority or Health Board, a 'care assessment' of your needs must be carried out.

The local authority has a duty to carry out care assessments for some people (although the assessment itself may be carried out by an NHS professional, for example a hospital social worker, or an occupational therapist) - in doing so they will consider what sort of help and support the person needs. Once your needs have been assessed, the local authority will make a decision about whether to offer you **community care services**, and if so, what sort. Community care services include services in your own home, such as home help or home care, a night sitting service or bathing. A local authority must disregard entirely the resources of a person when determining whether to make available community care services.¹

¹ (Section 12A (*Social Work (Scotland) Act 1968* Community Care (Disregard of Resources) Scotland Order 2002), (House of Lords Judgements - Robertson (AP) v Fife Council para 53).

Age Concern Factsheet 6, *Finding help at home* provides more information. Community care services can also include places in care homes.² Care homes may be run privately or by charities or by the local authority.

When the local authority is arranging or providing a place in a care home for you, it has to assess how much you should pay towards the cost. This is known as a financial assessment. The financial assessment will look at your **income** and **capital**. Capital includes savings and investments - and sometimes may include the value of any property which you own. The local authority is obliged by law to do this.³ Sometimes the financial assessment is also called the **charging procedure** or **means-test**, but it is different from the **care assessment**, which should only look at the sort of help you need and not at your finances. The rules governing eligibility for financial assistance with care home costs are set nationally by the Scottish Executive.⁴ Currently residents with over £20,000 are expected to meet the full accommodation costs in the care home but they will qualify for free personal and nursing care payments, after a care assessment, irrespective of how much capital they possess. (See **Free Personal care**)

Scottish Executive Guidance makes clear that, when they are in a position to do so, local authorities should be prepared to provide or arrange care for people who are taking up personal or nursing care payments or a deferred payment agreement and must disregard capital below £20,000 when considering whether to make accommodation arrangements for any other person.⁵

Free Personal Care

From 1 July 2002 'free personal care' has been a right for some people in care homes. From that date, people aged 65 and over who were assessed as needing care in a care home became eligible to claim personal care payments which contribute towards the cost of their care.

² Under sections 12 and 59 of the *Social Work (Scotland) Act 1968*.

³ Under section 87 of the *Social Work (Scotland) Act 1968*.

⁴ The rules for the means-test are set out in the National Assistance (Assessment of Resources) Regulations 1992 as amended. The Scottish Executive has produced guidance for local authorities about these rules: Charging for Residential Accommodation Guidance. Copies available from the Scottish Executive, Community Care Division 1, 2 East Rear, St Andrew's House, Regent Road, Edinburgh EH1 3DG or from URL: http://www.show.scot.nhs.uk/sehd/publications/CC2006_01.pdf This factsheet is written from these regulations and guidance.

⁵ Section 3 of the *Community and Health (Scotland) Act 2002* amends Section 12 of the *Social Work (Scotland) Act 1968*. Guidance on this is in CCD2/2002.

People of any age who need nursing care are eligible to apply for nursing care payments. These payments are made to everyone assessed as eligible, regardless of income or capital.

People already in a care home at 31 March 2002 did not require a **care needs assessment**. However, people entering a care home from 1 April 2002 required a care needs assessment to determine their eligibility for these payments.

The payments are made at the rate of £145 per week for personal care, and £65 per week for nursing care. If you need both, then the payment will be made at the rate of £210 per week.

Many people will be expected to pay towards their living costs in the care home from their own income and capital, unless they have insufficient means to do so. The **financial assessment** is described in detail later in this factsheet.

Non-means tested assistance with care home costs

While most people will be expected to pay towards the costs of their accommodation in a care home from their income and capital, there are some sources of assistance that are not means tested, and where in some circumstances the full cost of the care home place is met. These are set out below:

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

Some care home residents are eligible to have their care funded in full by the NHS and do not have to contribute towards the cost of it. Eligibility for fully funded continuing NHS health care is governed by local criteria based on Scottish Executive Guidance⁶. 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.

Age Concern Factsheet 37s, Hospital discharge arrangements and NHS continuing health care services has more details.

⁶ NHS MEL (1996) 22 NHS Responsibility for Continuing Health Care

The Veterans Agency

The Veterans Agency, formerly the War Pensions Agency, can pay towards nursing home fees 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 Veterans Agency Welfare Officer.

The rest of this factsheet only considers the way the financial assessment will be applied to you if your place in a home is not being paid for by the NHS or from the Veterans Agency.

3. The Care Assessment

Whether your stay in a home is temporary or permanent, financial support from the local authority is dependent first on the social work department assessing you as needing a place in a care home. This section explains the care assessment. If you have already been assessed by the local authority as needing a place in a care home, you may wish to ignore this section and move on to sections 4-7 which explain how much you will have to contribute towards the cost.

If you need care, you may choose to make all the arrangements and pay for your care yourself - section 13 may be helpful. However, many people who can pay in full need some help with arranging a place in a home (see also section 11); or may need financial support in the future. Others may be self-funding and be seeking access to the free personal and/or nursing element of their care. Whatever the case, it is important to know how the system works.

Your local authority social work department has a **duty to assess your care needs** if you appear to them to be in need of community care services which they may provide or arrange; if you are disabled you have right to an assessment.⁷ If you have a carer - someone who helps to look after you on a regular and substantial basis - he or she has the right to ask for an assessment of their ability to care (a carers assessment) whether or not you are having an assessment⁸ - contact Carers Scotland for more information (see section 14). You should be given a written copy of your care assessment.

⁷ Under section 12A *Social Work (Scotland) Act 1968*

⁸ Under section 9 of the *Community Care and Health (Scotland) Act 2002*. Guidance No. CCD2/2003

You have a right to an assessment whatever your financial resources. Recent guidance has stated that 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.

Having assessed you as needing care in a care home, the local authority has a duty to make the arrangements for you unless they are satisfied that you are able to make your own arrangements, or have others who are willing and able to make arrangements for you.¹⁰ Once your care needs have been assessed, the local authority will make a decision about what sort of services to offer you. From September 2002, the *Community Care & Health (Scotland) Act 2002* required the local authority to take account of the views of the individual and their carer, as well as the care provided by the carer, before deciding what services to provide.¹¹ Each local authority has its own eligibility criteria for different types of services. If the local authority decides to provide or arrange a service, you should be given information about this 'care plan', wherever possible in writing. Once the local authority has assessed your needs, they may agree that your needs will be best met by moving permanently to a care home.

Some financial help may also come from the Department for Work & Pensions: this is explained further in Sections 5 and 6. Financial help from the DWP office is dependent on how much income or capital you have. They do not assess your care needs.

If the local authority is arranging care, there should be no 'undue delay' in doing so. Local authorities have been told that if there is a delay then they should ensure that suitable arrangements are in place to meet your needs in the meantime.¹²

We talk about the local authority **'arranging'** the place in a care home - the local authority makes a contract with the home, and is legally responsible for paying the fee; or it provides a place in one of its own homes. The local authority must carry out a financial assessment to see how much you should contribute to living costs from your income and capital, after any free personal and/or nursing care payments.

¹⁰ Under section 87 of the *Social Work (Scotland) Act 1968*.

¹¹ CCD2/2003.

¹² Under section 87 of the *Social Work (Scotland) Act 1968*.

This financial assessment should come after the assessment of your care needs. See also Section 6 for temporary residents.

The Contract with the care home

The introduction of free personal and nursing care means that local authorities must now offer individuals the choice of how the contract is made with the care home.

However, if a private care home is not willing to enter into this negotiation the contract cannot be completed. There are three types of contract which can be made, and these are known as routes 1, 2 or 3. Individuals must be able to choose which route they wish to take.¹³

Contractual Route 1 - The self determined route

This route applies to those arranging their own care without a social work assessment or because they have been assessed as not having a level of need which makes them eligible for residential care.

Contractual Route 2 - The Mutual Route

Once the local authority has determined that the individual needs care in a care home setting, then they are eligible for free personal and/or nursing care payments.

By using the mutual route, the local authority enters into a contract to provide the care home with payments for personal and/or nursing care and the individual makes a private contract for the costs of living and other services with the care home. The free personal and/or nursing care payments are made direct to the care home.

Contractual Route 3 - The integrated route

Once the local authority has determined that the individual needs care in a care home setting, then they are eligible for free personal and/or nursing care payments.

If the individual chooses, then they can opt for the local authority managing the contractual arrangements on their behalf. The local authority would have a single contract with the care home, and the individual would make a contract for payment of their share to the local authority.

¹³ CCD4/2002 & CCD5/2002.

There may be advantages for the individual in using this method. It may well be cheaper for the individual to use this method, as the normal local authority contract may contain restrictions on fee increases, and may restrict the fee to 'the standard rate' - likely to be less than privately arranged rates. It may also monitor the quality of care provided.

4. The financial assessment

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. It applies if you enter a care home permanently, and it may apply if you are a temporary resident - but if you are a temporary resident (for example, for respite care) you should also see section 6.

If you show you cannot pay the '**standard rate**' - that is, the amount it costs the local authority to provide the place - then it must carry out a financial assessment. The standard rate may vary between different local authority areas, and may vary between individuals in the same area. This is because, once the local authority has assessed your care needs and agreed to arrange a place for you in a care home, it must be able to show that it can provide or arrange a place for you which meets these assessed needs. Care homes which offer different types of care may cost different amounts to the local authority. See also section 9 about choosing a care home.

Anyone who has **capital** of their own above £20,000 will be assessed as being able to pay the 'standard rate' less the contribution made for personal and/or nursing care. Those whose capital is between £12,250 and £20,000 will be expected to make some contribution from their capital as well as income. Capital below £12,250 is ignored and not included in the means-test - but you will still be expected to contribute from your income. Local authorities cannot assess the joint resources of couples - they have to look purely at your income and capital (but see also section 7.3 regarding liable relatives). In calculating the amount to be contributed the local authority has to allow the resident to retain a Personal Expenses Allowance (PEA) of £19.60 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). The rules which local authorities have to follow are closely linked to, but not exactly the same as, the benefits system.

There are some important differences in the way the financial assessment is applied if you are a temporary, rather than a permanent, resident. However, there is a general rule of thumb which will apply to everyone whether you are single or married; if you are the person assessed as needing a place in a care home, then only income and savings in your name, and/or your share of joint savings, should be included by the local authority in the financial assessment.

The following sections should help you find out what will happen in your case. (See section 7 for more information about couples living in the same care home).

5. Permanent residents

5.1 Your capital

Most forms of capital and savings will be included in the financial assessment including bank or building society accounts, national savings accounts, premium bonds, stocks and shares, and property (buildings or land). See section 5.2 to see whether the value of your home will be taken into account. However, the surrender value of a life insurance policy will be ignored. In this factsheet, we use the term 'capital' to mean both capital and savings.

More than £20,000 in capital: You will be expected to pay for living costs (the total cost less payments made for free personal and nursing care) until your capital is reduced to £20,000. However, no-one whose place is arranged by the local authority will have to pay more than the standard rate for the home, whatever their income or capital, unless they choose to do so.

Capital between £12,250 and £20,000: Both income and capital are taken into account in the means-test. Capital of between £12,250 and £20,000 will be assessed to show an assumed or tariff income. Every £250, or part of £250, of capital between £12,250 and £20,000 will be assessed as though you have an extra £1 per week income. For example, capital of £14,300 will be treated as an extra £9 per week income. If you have capital between £12,250 and £20,000 make sure that your contributions are reviewed each time your capital drops into the next £250 'band'.

Capital below £12,250: No tariff income is assumed from capital below £12,250.

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, the value of trusts held in trust or administered by court which derive from a payment for personal injury, and personal possessions (so long as they were not bought with the intention of avoiding care costs).

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 legal advice if this applies to you.

Jointly held capital: As with income, only capital in your name should be included in the means-test if you are the person needing care in a home. If you jointly hold capital with another person or people, it is divided equally between the joint owners. You may want to consider splitting the account. See section 5.2 for property held jointly as the rules are different. So if you have a joint bank or building society account - for example, with your husband or wife who will continue to live in the family home when you enter a care home - only half of the balance of the account will be included as your capital. In these circumstances, you might want to consider splitting joint accounts into two equal separate accounts. This is because it is always half of the balance of the account which is included: it is not possible for the purposes of the means-test to 'spend down' only one half of a joint account.

'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).

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). 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 £20,000 then no precise valuation is needed because you are then expected to pay for the full living costs yourself. See also section 5.2 about property.

5.2 Treatment of the value of your home

This section describes some of the most common aspects of 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*.

There is a twelve week property disregard on permanent entry to a care home. If a person is firstly considered temporary, the property is disregarded, and once the stay has been confirmed as permanent, then the value of the property will be disregarded for a further 12 weeks. This provision can be claimed from the local authority up to 12 weeks following admission to a permanent care home.

There are some circumstances when the value of your former home **must** be ignored for the purposes of the financial assessment if you move permanently to live in a care home (see also section 6 if you are a temporary resident).

Both the local authority and the Pensions Service must ignore the value of your former home where it continues to be lived in 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 relative¹⁴ who is aged 60 or over;
- a relative who is aged under 60 but is incapacitated;¹⁵
- a child under the age of 16 whom the resident (the person entering a home) is liable to maintain (this applies to local authority assessments only);
- a divorced or estranged partner, who is a lone parent with a dependent child.

¹⁴ 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.

¹⁵ '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 incapacity would be similar to someone who does receive such a benefit. Medical or other evidence may be useful in proving this.

The local authority (but not the Pensions Service) also has a **discretionary** power to ignore the value of any premises occupied by a third party where the local authority considers it reasonable to do so. This could include situations where, for example, younger relatives have been living in your home and helping to look after you, or where a friend, who is over 60 or a same sex partner has been living with you. Contact your local authority, and explain your circumstances if you want to be considered this way.

Joint owners: If you jointly own property with someone else who either does not live in the property, or who does live there but does not fit into the categories outlined above, your share of the property may have a value which would be included in the financial assessment (bar the 12 week disregard period).

Sole owners living alone: If you own your home and no-one else lives there with you, then its value will be included in the financial assessment as capital (bar the 12 week disregard period).

Valuation of property: The local authority cannot force you to sell your property without a court order. However, if it agrees to make arrangements for you to go into a home, and you own a property not lived in by certain other people (see above) it will assess you as having its capital value. If there is a dispute about how much the property - or your share of it - is worth, or if the local authority will be creating a legal charge (see below), then you should obtain a professional valuation. Any debts outstanding (such as a mortgage), plus 10% of the assessed value (in recognition of the costs which would arise from selling the property), should be subtracted to give you the current market value of the property. Once the property is sold the actual amount from the sale minus the actual expenses involved in selling and any debts secured against the property are used to calculate the capital. The 10% rule is only for the purposes of calculating the value of the property and is not applied once the property is sold.¹⁶

Renting out your property: Some people in this situation might choose to rent out their property, and use the rental income together with their existing income to pay towards the fees of the home. If you decide to let your property, you should seek financial and legal advice. Age Concern Scotland is not able to give this.

¹⁶ Under Sections 12 and 59 of the *Social Work (Scotland) Act 1968*.

In some cases, renting out might generate enough income to pay the fees. If so, then you would count as a self-funding resident, and may only be able to claim free personal and/or nursing care, or if you choose not to claim this, Attendance Allowance (see section 13). For others, this might not produce enough income to pay the fees.

‘Deferred payment agreements’ where capital is tied up in property: If you do not have enough money to pay the fee, the local authority will assess you as paying the full fee for living costs and so you may build up a debt. 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. A deferred payment is where a debt is built up for care costs, and the authority claims back the money by means of a standard security on the value of the individual’s property. 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.

Deferred payments are interest free until the agreement is terminated by the resident or 56 days after their death. Interest will then be charged at a ‘reasonable’ rate as determined by the local authority.¹⁷ For rules on eligibility and on what portion of a person’s payment are deferred, see Circular No 13/2004 for details.

The local authority can impose a type of secured loan called a Charging Order on your property. This is a formal process which means that the local authority puts a claim on the value of the property so that it can claim back the money which you owe, once the property is sold. The local authority can do this without your consent.¹⁸ However, it *cannot* add interest to the charge until the day after you have died, if the charge has not been repaid in the meantime.¹⁹ You should seek legal advice if the local authority states that it wishes to create a Charging Order. Age Concern is unable to give financial or legal advice.

¹⁷ *Community Care & Health (Scotland) Act 2002*, Section 6 and Community Care (Deferred Payments) (Scotland) Regulations 2002 (S.S.I. 2002/266 - Scottish Executive Guidance in Circular no 13/2004.

¹⁸ Under Section 22 of the *Health and Social Services and Social Security Adjudication Act (HASSASSA) 1983*.

¹⁹ Under Section 22 of the *Health and Social Services and Social Security Adjudication Act (HASSASSA) 1983*.

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.

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

- disregarded (ignored) in the means-test; **or**
- partly disregarded; **or**
- included.

Income could include:

- state retirement pension;
- occupational and/or personal pension;
- Pension Credit;
- assumed income from capital (see section 5.1).

Income which is disregarded: Some income will be disregarded in the means-test calculation. The most common disregards include:

- Disability Living Allowance mobility component;
- War Widow's Special Payments - the special war widow's pension of £68.42 introduced 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 above 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;
- 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. Local authorities should also disregard the payments made by residents to local authorities towards housing support costs. Housing support charges would not normally be relevant once a person enters long term care. However, some residents may continue to receive Supporting People payments for a period after entering long term care because they remain liable to pay support charges, for example, during the notice period of a tenancy. Residents who enter homes for temporary or respite care may also have continued liability to pay charges and will continue to receive Supporting People payments;
- any payments of Child Tax Credit or Guardian's Allowance.

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

- £10 per week of a War Widow's or War Disablement Pension;
- £20 per week of certain charitable or 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 can be ignored by the local authority (but not for Pension Credit purposes) where the pension is received by a married person in a home, provided the disregarded amount is paid to his or her spouse - and the spouse does not live in the same care 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 £5.05 per week (£7.50 for a couple).

- For individuals with higher incomes who are unable to claim Pension Credit or have been awarded less than £5.05/£7.50 per week a flat rate disregard of £5.05 (£7.50 for a couple) per week is applied.

Income which is included: Income such as your state retirement pension, Pension Credit, assumed income from capital (see 5.1 above), 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 if it may contact your local Department for Work and Pensions office. Social Security benefits include state retirement pension, Pension Credit, Attendance Allowance and Income Support.

Pension Credit: Pension Credit has two parts, both of which are means-tested. The **guarantee credit** replaces the Minimum Income Guarantee (MIG) for pensioners. The **savings credit** provides extra support to those aged 65 or over who have income above a certain level and who have made some provision for themselves by saving or arranging additional pensions. Each is explained briefly below and in further detail in respect of those aspects of the benefit which affect paying for care in a care home. A fuller explanation of the general rules for Pension Credit can be found 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 £6,000.

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 savings credit can be found in Age Concern 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 £114.05 per week for a single person and £174.05 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 £84.25 per week for a single person (and £134.75 for a couple). If your qualifying income is more than this but less than £114.05 per week (£174.05 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 £17.88 per week for a single person (£23.58 for a couple). For incomes greater than £114.05/£174.05 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 £158.75 per week, or a couple with qualifying income of £233 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 £114.05 (£167.05 for a couple) the authority has to disregard an amount equivalent to any savings credit awarded up to a maximum of £4.85 per week (£7.20 for a couple).

For claimants with qualifying income of greater than £109.45 per week (£174.05 for a couple), who either receive savings credit or an ineligible because their qualifying income is too high, a flat rate disregard of £5.05 per week (£7.50 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. Once your property is sold, these Pension Credit amounts do not have to be repaid.

There is no upper capital limit for Pension Credit and this raises the possibility that 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 general 12 week disregard of property for Pension Credit during the first 12 weeks of permanent care as there is for local authority funding. Entitlement to the benefit during the period of the 12 week disregard will cease 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 readjust 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 both your benefits and what the local authority charges you to make sure they tally.

This factsheet does not explain the Pension Credit system fully. You should be able to obtain information from the person carrying out your assessment. Age Concern Factsheet 48, *Pension Credit* describes the rules in more detail.

Attendance Allowance/Disability Living Allowance (care): Some people who enter a private or voluntary care home will be receiving Attendance Allowance (AA) or the care component of Disability Living Allowance (DLA(care)).

If an individual claims free personal care, or gets any other financial help from the local authority, then these benefits will cease after 28 days. Please note that this does not apply if the individual only gets help with nursing care costs.

This will mean that your Pension Credit entitlement will be adjusted after 4 weeks. If you subsequently return home - or move elsewhere such as to sheltered housing - you can ask for payments of AA/DLA(care) to begin again. It can begin again if the local authority gives financial help for the cost of fees. Note that AA/DLA(care) might be payable if you are temporarily away from a care home. You should always inform the Department for Work and Pensions if you want your AA/DLA(care) paid again.

Further information about AA/DLA(care) is available in Age Concern Factsheet 34, *Attendance Allowance and Disability Living Allowance*. See also section 13.

Additional Payments or third party contributions: If you choose a more expensive home than the local authority would normally provide for someone with your assessed needs (see section 9 on choosing a home), in certain circumstances the resident or someone else may pay the difference between what the local authority would 'normally' pay, and the home's fees. Such payments are called 'top up' 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 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 rules on topping up of care home fees are explained in full in CCD6/2002.

'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 to the local authority or the home as a 'top up payment', 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 financial assessment 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.

In calculating what you should pay, the local authority should make sure that you are left with a weekly amount of £19.60 - this is known as your 'personal expenses allowance' (PEA). The local authority should tell you - normally in writing - how it was calculated and how much you should pay.

If you are eligible for free personal and/or nursing care, then the local authority should pay that amount as a minimum towards your fees.

They may pay more, if the financial assessment shows that you are eligible, but the personal and nursing care payments are made irrespective of means.

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 standard rate for the care home is £ £350 per week, which is within the local authority's usual limit. You are 83 and single, and lived in a rented flat. You have capital of £7,500, and your weekly income is the basic state retirement pension of £84.50, and Pension Credit Guarantee Credit of £29.55 to give an applicable amount of £114.05 per week.

What is ignored: Your capital is ignored because it is less than £12,250.

What is included: By moving permanently into a voluntary sector home you are eligible for Pension Credit and state pension.

The local authority calculation	£
Total weekly income (£84.50 + £29.55)	114.05
<i>/less</i> personal expenses allowance	<u>19.60</u>
Your weekly contribution	94.45
Cost of the home	350.00
<i>/less</i> your contribution	<u>94.45</u>
Local authority's contribution	255.55

As this amount is more than the £145 that would be received through free personal care, the local authority will pay the higher amount of £255.55.

Example 2

The local authority agrees to arrange a permanent place for you to enter a care home which costs £350 per week. 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 £84.50 per week. You have a savings account in your name of £9,900, and a joint account with your wife of £6,000. (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 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 £9,900 are included in the local authority calculation, together with half of the balance of the joint account you hold with your wife ie £3,000 - your total capital will be assessed as £12,900, so you will have a tariff income of £3 per week (£1 per £250 you have over £12,250). 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 £114.05) or savings credit (income above £158.75). However as your assessed income is in excess of £158.75 per week the local authority must disregard £5.05 per week of that income (in addition to allowing you to retain a PEA of £19.60).

The local authority calculation

Your weekly income	£
State retirement pension	84.50
50% private pension	70.00
tariff income from capital	3.00
<hr/>	
157.50	
less personal expenses allowance (PEA)	19.60

less disregard of qualifying income for
Pension Credit 5.05

Your weekly contribution	132.85
Cost of the home	350.00
Less your contribution	132.85
Local authority's contribution	217.15

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

6. Temporary residents

Some people will go into a home on a temporary basis - perhaps because they need respite care for a short time; or whilst they are waiting to move to somewhere more suitable, such as sheltered housing; or whilst they are recuperating from an illness. Some people may 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.

When the local authority is making the arrangements, your care assessment (see section 2 above) 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: but this agreement that your stay is temporary must be in place throughout this time.

If the local authority agrees to arrange 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 financial assessment to you straight away, or for the first 8 weeks it can ask you to pay an amount which is 'reasonable' for you to contribute. Age Concern Factsheet 6, *Finding help at home*, has more information about being asked to pay a 'reasonable' amount. After 8 weeks, it must apply the financial assessment to you, bearing in mind the differences for temporary residents outlined below.

You may receive regular respite care in a home - for example, you might have respite care in a home for 1 week every 6 weeks. If your local authority has chosen not to apply the financial assessment, but to charge you a 'reasonable' amount, then this will be the cost to you each time.

The 8 week limit, when the local authority must apply the financial assessment, does not link together separate periods of respite care - so you will not be financially assessed as set out in this factsheet after you have had your 8th separate week of respite care if your local authority's policy is to charge you a 'reasonable' amount.

If your local authority applies the financial assessment to you either straight away or after you have spent 8 continuous weeks as a *temporary* resident, then it must:

- ignore the value of your home;
- help you financially if your capital (not your home) is £20,000 or less and you do not have enough income to pay the 'standard rate';
- ignore some of your income so you can continue to pay bills at home - for instance, water charges, 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)) which you receive.

*If the amounts which the local authority has ignored from your income to allow you to continue to pay your bills at home is not enough, you could make a complaint to the authority to this effect, using the local authority's complaints procedure - see section 12.

The **value of your home** is ignored 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. Your other capital will be included in the means-test as outlined in section 5.

Although any AA/DLA(care) which you receive will be ignored by the local authority, if you are receiving financial support from the local authority towards the cost of your temporary stay in the home, AA/DLA(care) will stop after 4 weeks. Once you have left to return to your own home, AA/DLA(care) can resume. But if you return to a care home within 28 days of your last stay, AA/DLA(care) will be affected.

You need to tell the Department for Work and Pension 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 couple's rate rather than the rate for two single people. This differs from Income Support where the minimum income which a couple would require for such a period is calculated on the basis of what two single people would be required under the circumstances. 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 Changing from temporary to permanent

Sometimes a temporary stay may be arranged, and it then becomes clear that you need to stay in a home permanently. If so, then the local authority will need to apply the financial assessment for a permanent resident, as outlined in Section 5. However, it should not 'back-date' this to the day you first went into the home as a temporary resident. The financial assessment as a permanent resident, should apply from the date it is decided your stay is to become permanent. The 12 week disregard of the value of the property will apply from the date it is decided that the stay is to become permanent. Any period of temporary care will not count.

Similarly, a stay which was initially assessed as permanent may turn out to be temporary - for example, 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. If so government guidance is that it would be unreasonable to not continue to apply rules which would have affected you as a permanent resident - such as taking the value of property into account, and in particular the placing of a charging order on the property.

6.2 'Trial' periods

You might be a temporary resident because you have entered that home on a 'trial' basis: that is, to see whether you would like to stay in that home permanently.

If you usually receive Housing Benefit or Pension Credit housing costs or Council Tax Benefit towards your housing costs when you are in your own home, you should not think that this can only be paid for 13 weeks if you are having a 'trial' period in a home.²⁰

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 financial assessment system might be applied in your case were you to need help paying fees in the future.

In order to obtain financial support from the local authority, you must *both* be assessed as needing care provided in a care home. If this is the case then you would both be eligible for free personal and/or nursing care payments regardless of means, dependant on your age. Once this has been agreed, the local authority *must*²¹ then look separately at the income and savings which you each have in your name, and calculate separately for each of you how much you should contribute from your separate resources using the financial assessment outlined in section 5. If this amount is greater than the amount of personal or nursing care payment awarded, then the local authority must pay the greater amount.

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 each of you has £20,000 or less **in** savings, you may each 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 homes.

²⁰ Under Sections 12 and 59 of the *Social Work (Scotland) Act 1968*.

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

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 care home, you should check to see whether you might now be eligible for Pension Credit, Housing Benefit (for help towards your rent) or Council Tax Benefit (or discount if you now live alone). See Age Concern Factsheet 18, *A brief guide to money benefits*.

If you are married or civil partners and your spouse, who is in a home receives a private pension then half this money can be paid to you by your spouse - if so, this half will be ignored by the local authority when calculating how much your spouse/civil partner should pay towards the costs of their care in a home. A private pension is an occupational pension, a personal pension or a payment from a retirement annuity contract.

If you do receive half your spouse/civil partner's private pension, this may affect any other benefits to which you are entitled - such as Pension Credit - because this amount will now count as part of your income.

However, this disregard 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. If this is the case, then you can ask the local authority to use its discretionary power to vary the amount of the personal expenses allowance - that is, the amount of £19.60 per week which they 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. This power is discretionary which means that the local authority may - but does not have to - do this. The Pensions Service does not have this discretionary power.

However, 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

As described above, the local authority has no power²² to assess a couple according to their joint resources. Therefore, you should be assessed only on the value of your own (or your share of jointly-owned) resources.

However, section 42 of the *National Assistance Act 1948* states that for provisions made under the Act (such as the local authority arranging a place in a care home), a man is liable to maintain his wife, and a woman is liable to maintain her husband. The person is referred to as being a '*liable relative*', and applies only to married couples - unmarried couples and civil partners are not legally liable to maintain each other under this Act, even when they live together as husband and wife or in a civil partnership. It does not apply to other relatives.

This means that the local authority can ask your spouse if he or she will agree to contribute towards the cost of your care from his or her resources.

The Scottish Executive has announced that it intends to repeal the liable relative rule. The repeal is contained within the main provisions of the Adult Support and Protection (Scotland) Bill, which is expected to come into force in 2007. In the interim, the Scottish Executive encourages local authorities to consider exercising their discretion not to apply the rule.²³ If you are asked to make a liable relative contribution, Age Concern Factsheet 39, *Paying for care in a care home if you have a partner*, has more details.

²² Under the *National Assistance Act 1948* which applies in Scotland by virtue of the *1968 Social Work (Scotland) Act*.

²³ http://www.show.scot.nhs.uk/sehd/publications/CC2004_06.pdf

8. Deprivation of assets

'Deliberate deprivation' is the term used when someone is assessed as having given away assets (either income or capital) in order not to have to use those monies to pay for their care. Scottish Executive²⁴ guidance to local authorities suggests that the timing and motive behind the transfer should be taken into account.

The Department for Work and Pensions will also consider whether giving away (or selling at below its market value) an asset was done deliberately in order to qualify for benefits such as Pension Credit.

Further information about 'deliberate deprivation' and the impact which this could have on you, or on 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: Additional payments or third party contributions

Age Concern Factsheet 29, *Finding care home accommodation* gives detailed information about finding a care home.

When the local authority makes arrangements for you to enter a home, you have the right to choose the home 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 anywhere in Scotland, and in England and Wales by special arrangement.²⁵

²⁴Under section 12 and 59 of the *Social Work (Scotland) Act 1968*.

²⁵The Government guidance about choosing a home is in Circulars SWSG5/93 and SWSG6/94.

If you choose a home (your 'preferred accommodation') which is different from the home which the local authority suggests, then the local authority can 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 of 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.

However, if you are being discharged from hospital to a care home arranged by the local authority, guidance from the Scottish Executive states that 'where, however, a place in the particular home chosen by the patient is not currently available and is unlikely to be available in the near future (8 weeks), it may be necessary in exceptional cases for the patient to be discharged to another home until a place becomes available.'²⁶ Age Concern Factsheet 37s, *Hospital discharge arrangements and NHS continuing health care services* has more information about being discharged from hospital.

Additional contribution: If your 'preferred accommodation' would cost more than the local authority would normally pay, the Community Care (Additional Payments) (Scotland) Regulations 2002 ensures that an additional contribution made by a third party, or, in defined circumstances, the individual themselves, can make up the difference between that figure and the home's fee.

However, this does not mean that local authorities can set arbitrary ceilings on the amount which they will pay. The local authority cannot simply say that it will pay up to a certain amount, without being able to show where it would arrange such a place which suites your assessed needs. If, for example, you believe that there are particular needs which you have which are not being met in the offer of accommodation (for example, religious or dietary needs, or the need to be near relatives such as your spouse), you may wish to use the complaints procedure to argue that the local authority should pay to meet these needs - see Section 12.

²⁶ 'NHS responsibility for continuing health care' NHS MEL (1996)22

If you have a problem about choice of accommodation - either in finding suitable accommodation, or in agreeing what the authority should pay - contact Age Concern Scotland to see whether we have further information.

Where a person requests more expensive accommodation, and an additional payment is agreed, the local authority is obliged to make a contract with the preferred home subject to the conditions outlined in the Community Care (Additional Payments) (Scotland) Regulations 2002. The contract should be made on the local authority's normal terms and conditions, and the additional payments may either be made by a third party, or in certain circumstances outlined below, the individual themselves. However, the additional payment maker 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 additional payment maker 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 additional payment maker's payments cannot be continued for some reason, you may well have to move to another home.

The local authority is not obliged to make a contract with a more expensive home if the person proposing to make the payments is a 'liable relative' (see section 7.3 above). However, it can agree to do so if the liable relative can both meet their liability and make up the extra cost.

Residents themselves can only make additional payments where a 12 week property disregard applies, where there is a deferred payment agreement between the resident and the local authority, or where the person is benefiting from the receipt of free personal or nursing care payments from the local authority.

Not all of a resident's resources may be used to pay for additional payments. The resources which may be used to pay additional payments are specified in the Additional Payments Regulations 2002.²⁷

Residents are not generally allowed to use any disregarded capital or income that they might have to act as their own third parties except in the limited circumstances mentioned above.

²⁷ Community Care (Additional Payments) (Scotland) Regulations 2002, reg 3.

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. The contract 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 of £19.60 to cover costs such as these.

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, as well as providing - where necessary - incontinence and nursing aids, physiotherapy, speech and language therapy and chiropody and the provision of specialist nursing advice such as incontinence advice or stoma care.

Where such services are provided by the NHS, they are provided free of charge. The NHS can also provide specialist equipment for your use - such as specialist feeding equipment.

These NHS responsibilities for those in care homes also apply to people who have arranged and are funding their own care.

Each NHS Board sets its own criteria for the type of help it will provide, based on guidance issued by the Government.²⁸ If you have difficulties in obtaining information about the NHS Board's criteria, or you feel these have not been correctly applied to you, you can complain to the NHS Board. Your local Health Council will be able to give you further information about doing so.

You may not have a formal 'contract' with either the home or the local authority, but you will want to be sure that you do have an agreement which shows exactly what care the local authority intends should be included in the fee paid to the home. This agreement could form part of your 'care plan' which the local authority should prepare with you following the assessment of your needs.

²⁸ 'NHS responsibilities for continuing health care' NHS MEL (1996)22.

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

When the local authority arranges a place for you in a care home using the mutual contractual route 3 (see section 3), 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 as paying 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.

Appointeeships: If a person receiving social security benefits is unable to manage his or her affairs, the Secretary of State for Social Security (through the local Department for Work and Pensions office) can appoint someone else to exercise 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 it collects on your behalf. The claimant and the prospective appointee will be interviewed before any appointment is made.

If the older person has income other than benefits, or capital then it may be necessary to make legal arrangements to handle money on their behalf, if they no longer have capacity to manage their own finances.

Power of attorney: People sometimes handle older people's financial affairs without proper authority, and local authorities are advised by the Scottish Executive to find out whether someone has been formally authorised to deal with the person's financial affairs.

The introduction of the *Adults with Incapacity (Scotland) Act 2000* has led to the introduction of Welfare and Continuing Attorneys, and Guardianship orders, which serve to authorise people to deal with financial and welfare issues.

Part 4 of the *Adults with Incapacity (Scotland) Act*, which comes into force on October 1 2003, enables managers of care homes and the independent hospitals, to manage the finances of residents where the resident is deemed incapable by a medical practitioner and no other course of action is possible or appropriate. The provisions of this part of the Act will be regulated by the Care Commission.

Age Concern Scotland Factsheet 22s, *Legal arrangements for managing financial affairs* has more detailed information about these matters.

If you handle someone's financial affairs, you have no responsibility to pay for that person's care out of your own resources, unless you choose to do so (or you are a liable relative - see Section 7.3). You do however have the responsibility to use the resident's money in the resident's interest, and thus use it to pay the resident's assessed fee.

Advocating for the older person: Someone you know may need care in a care home, but may not be capable of making decisions for themselves. It is important to try to represent that 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 else becomes an advocate for the resident. Advocacy schemes may be run by the local authority, or by local organisations such as local Age Concern groups. However, they are not available everywhere. Your local authority or Health Board should be able to tell you whether there is a scheme in your area. An 'advocate' should 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 interests actually means.

12. Sorting out problems: the local authority complaints procedure; The Scottish Commission for the Regulation of Care

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, you should use the complaints procedure if you cannot resolve this with the staff concerned.

However, concerns about standards or treatment in a home are probably best taken up first with the staff or manager of the home; or, if more serious, with the Scottish Commission for the Regulations of Care (the Care Commission) which has powers to inspect homes and see that necessary improvements are made.

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. Further information is available in Age Concern Factsheet 29, *Finding care home accommodation*.

If you are ineligible for free personal and/or nursing care, or wish to pay all the fees yourself, you may be able to claim Attendance Allowance. Details of who is eligible for, and how to claim, Attendance Allowance are given in Age Concern Factsheet 34, *Attendance Allowance and Disability Living Allowance*.

In order to access financial help from the local authority at a later date, the local authority must first assess your care needs and agree that you need care in a care home before it will consider helping you financially. There can sometimes be a delay. Local authorities have been told that in this case they must undertake an assessment as soon as reasonably practicable, and if necessary take over the arrangements so as to ensure the resident is not forced to use up capital below the £20,000.²⁹ There may be difficulties if, by making your own arrangements, your home costs more than the local authority 'normally' pays for someone with your assessed care needs, particularly if there is no additional payment maker who could help you meet any shortfall (see also section 9).

If you feel this situation may arise, you may want to contact the local authority to find out about its policy in such situations. If you made private arrangements and moved to a different part of the country to live in a home, it may be the local authority where you now live which would be involved. Depending on your circumstances, you may find that the local authority is reluctant to commit itself to a future need.

²⁹ Under section 87 of the *Social Work (Scotland) Act 1968*.

People paying full fees for themselves can receive AA/DLA(care) if they do not get free personal care payments. People who make their own arrangements to enter a private or voluntary home may be able to claim Pension Credit.

There is no fixed upper capital limit for this benefit, although residents with high capital may find that the tariff income which they are treated as having affects their eligibility for the benefit. Such people, if also eligible for AA/DLA(care) would also have the additional amount for severe disability £46.75 per week included in the calculation for guarantee credit. It will depend upon the individual's circumstances whether it is viable to try and meet the cost of care from benefits and any other sources without involving the local authority. As the Pension Credit guarantee credit does not include a residential allowance the total income available from benefits is likely to be insufficient to meet the costs of a home by itself. Residents who were previously funding their care from higher levels of benefits income available prior to October 2003 should have been contacted by the social security office and advised about future funding options.

14. Further information

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

The Scottish Commission for the Regulation of Care (The Care Commission) is a national organisation set up under the *Regulation of Care (Scotland) Act 2001* to regulate and inspect Scottish care services. The Care Commission operates throughout Scotland and has five regional offices with local resource offices to co-ordinate regulation of care services at a local level. The Care Commission's headquarters are located with the Scottish Social Services Council in Dundee. Headquarters; Care Commission, Compass House, 11 Riverside Drive, Dundee DD1 4NY, tel: 01382 207 100 or 0845 60 30 890 (lo-call rate).

Carers Scotland, 91 Mitchell Street, Glasgow G1 3LM, tel: 0141 332 2444. 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), Monday to Friday, 10.30am to 12.30pm and 2pm to 4pm. A charity which provides general advice for older people, their families and professionals on community care and other issues.

Elderly Accommodation Counsel, 3rd Floor, 89 Albert Embankment, London SE1 7TP, tel: 020 7820 1343 (Weekdays 9am to 5pm). (Answerphone at all other times), email: enquiries@e.a.c.demon.co.uk, website: www.housingcare.org. A registered charity which maintains a nationwide database of all forms of accommodation for older people - retirement housing for sale and rent, care homes and hospices. It also gives guidance and advice and detailed information to help enquirers choose the accommodation most suited to their needs.

The Relatives and Residents Association, 5 Tavistock Place, London WC1H 9SS, tel: 020 7916 6055, fax: 020 7916 6093. Advice line weekdays 10am to 12.30pm and 1.30pm to 5pm. The Relatives and Residents Association gives advice and help to older people in homes, their relatives and friends. The Association is committed to improving the standards of care through the active involvement of residents and relatives. Its aim is to promote a common understanding between relatives, residents, home providers and staff. Local groups exist through the country; contact the Association for more details.

15. Further information from Age Concern

Age Concern's annual publication *Your Rights* gives more information about pensions, benefits and other kinds of financial help. The 2006-2007 edition costs £5.99 and is available from Age Concern Scotland, Causewayside House, 160 Causewayside, Edinburgh EH9 1PR. Telephone 0845 833 0200 (lo-call rate). Postage and Packing £1.99, Monday - Friday 9am to 5pm.

The following factsheets may be of use:

Factsheet 6	<i>Finding help at home</i>
Factsheet 18	<i>A brief guide to money benefits</i>
Factsheet 29	<i>Finding care home accommodation</i>
Factsheet 34	<i>Attendance Allowance and Disability Living Allowance</i>
Factsheet 37s	<i>Hospital discharge arrangements and NHS continuing healthcare services</i>
Factsheet 38	<i>Treatment of the former home as capital for people in care homes</i>
Factsheet 39	<i>Paying for care in a care home if you have a partner</i>
Factsheet 40	<i>Transfer of assets and paying for care in a care home</i>
Factsheet 48	<i>Pension Credit</i>

If you would like

- to find your nearest Age Concern
- any additional factsheets mentioned (up to a maximum of 5 will be sent free of charge)
- a full list of factsheets and/or a book catalogue
- further information or if you have questions arising from this factsheet
- to receive this information in a different format

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.

If you have questions arising from this factsheet, or it does not cover the information you require, please contact the ***Scottish Helpline for Older People***, managed by Age Concern Scotland. They give information on wide variety of topics, and can be contacted on 0845 125 9732 (lo-call rate), or write to them at Scottish Helpline for Older people, Age Concern Scotland, Causewayside House, 160 Causewayside, Edinburgh EH9 1PR.

Age Concern provides factsheets free to older people, their families and people who work with them. If you would like to make a donation towards the work of Age Concern Scotland, you can send a cheque or postal order (made payable to Age Concern Scotland) to Age Concern Scotland, Causewayside House, 160 Causewayside, Edinburgh EH9 1PR. Find out more about Age Concern Scotland online at www.ageconcernscotland.org.uk, or Age Concern England at www.ageconcern.org.uk.

Age Concern's series of over 40 factsheets is available as a subscription service to those whose work involves older people; for details of this service please call us on 020 8765 7200 (national call rate) and ask for our factsheet subscription leaflet.

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