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**January 2005
Scotland**

Key Points:

- Replaces previous version dated April 2001
- Introduction of the Single Shared Assessment Process

Local authority assessment for community care services

As Scottish law differs from English law, readers living in England, Wales or Northern Ireland can obtain a similar Factsheet 41, *Local authority assessments for community care services* available by telephoning 0800 00 99 66 (free call), from the website: www.ageconcern.org.uk or by writing to Age Concern FREEPOST (SWB 30375), ASHBURTON, Devon TQ13 7ZZ.

Those living in Wales or Northern Ireland may wish to contact: Age Concern Cymru, 4th Floor, 1 Cathedral Road, Cardiff CF11 9SD, tel: 029 2037 1566 (charged at national rate); website: www.accymru.org.uk;

Age Concern Northern Ireland, 3 Lower Crescent, Belfast BT7 1NR, tel: 028 9032 5055 (charged at national rate) Monday - Friday 9.30am - 1pm.

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**Factsheet 41
Scotland**

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1. Using the factsheet

When we use the words 'local authority' in this factsheet we mean the council area in which you live, such as Aberdeen City or East Lothian.

The **social work department** is part of your local authority, and is responsible - amongst other duties - for assessing people's need for 'community care services', arranging or providing these services, and providing financial support for those who need places in care homes. The social work department should be in the telephone directory under the name of the local authority. Your town hall or council offices, Citizens Advice Bureau, and local Age Concern will also be able to tell you how to contact the social work department.

Following recent changes in the structure of the NHS in Scotland, NHS Boards, Acute and Primary Care Trusts will be abolished and replaced by Unified NHS Boards. The new unified NHS boards will be responsible for the meeting the health needs of people who live in their area. They will do this by arranging most health services, including GPs, dentists, district nurses and NHS Hospitals.

Local Health care co-operatives, set up initially by groups of GPs to co-ordinate local health care, will change and be known as Community Health Partnerships. They will work with local authorities to provide health and social care services in their local area.

2. Local authority assessment

Before the local authority social work department can assist you, it must first carry out an assessment of what your care needs are. This assessment may be referred to as a needs assessment or a care assessment. In the past, local authorities might have carried out assessments independently of other bodies who might also have responsibility towards an individual, such as the NHS. The Scottish Executive has now taken steps to encourage those bodies to work together where this might of benefit to the person concerned.

The Scottish Executive has introduced a *Single Shared Assessment* process under which the agencies responsible for assessing your social care, health, housing and other needs should work together to minimise any duplication of efforts.

All local authorities and health boards in Scotland have established the Single Shared Assessment (SSA) and have put in place procedures for sharing information so that you do not have to give your basic details more than once. The process should be led by a single professional with other, specialist involvement if that is appropriate.

The SSA does not cancel out local authorities' existing responsibilities, and your legal entitlements to help from social work departments and Health Boards are unchanged.

After the care assessment, the local authority will decide whether or not it should provide or arrange community care services for you under its eligibility criteria. Eligibility criteria are locally set rules on what type of needs the local authority will meet. Each authority sets its own eligibility criteria.

Other than for personal care for people over 65, which cannot be charged for, local authorities have discretion as to how they charge for care provided for people living at home. Having established that it should arrange or provide services for you, the local authority will usually then carry out a financial assessment to establish how much you should contribute towards the cost of those services.

With the introduction of the *Community Care and Health (Scotland) Act 2002* there have been a number of significant changes to community care law. The major change, with effect from 1 July 2002, was the introduction of 'free personal and nursing care. Under the Act, changes were made to charging procedures for personal care services at home and residents of care homes. The Act provides that aspects of personal care services are to be delivered free to people over 65 and living in their own homes that are assessed as needing them.

Personal Care

Guidance issued by the Scottish Executive states that **personal care** includes help with a variety of tasks such as: bathing, **personal** hygiene, dressing, getting in and out of bed, continence management, assistance with eating and special diets.

Personal care became a free service from 1 July 2002 to all people 65 and over. The National Health Service provides nursing care for those living at home free of charge.

Domestic Assistance

Domestic assistance includes tasks such as housework, shopping and making beds. **Domestic assistance continues to be chargeable.**

The *Community Care and Health (Scotland) Act* contains the power to regulate charging for domiciliary (home) care, if it considers this necessary, although currently guidance on charges for non-personal care services is issued by the Confederation of Scottish Local Authorities (CoSLA).

Guidance is informal, non-statutory advice and should not be taken as an authoritative statement or interpretation of the law. Each local authority is able to decide whether it wishes to charge for these services and, if so, how much. Charges can, and do, vary for similar services in different parts of Scotland.

Any charge must be 'reasonable' for you to pay, and you have the right to ask your local authority to reduce the amount you are being asked to pay, or waive it altogether if the amount is not 'reasonable' for you to pay

3. What are community care services?

When we refer to community care services provided by the local authority these can include:

- home help or home care;
- respite care;
- day care;
- night sitting services;
- care in a care home;
- provision of aids to help with ordinary tasks of daily living;
- meals on wheels.

Local authorities can directly provide services themselves or make arrangements for private or voluntary sector organisations to provide care on their behalf.

If you have been assessed by the social work department as needing community care services to help you remain at home, you may be able to choose to receive cash from them as a way of giving you more control over the way your care needs are met.

This is called a '**Direct Payment**'. The payments are instead of having your services provided or arranged for you by your social work department. The local authority has a duty to offer direct payments to people to buy their own community care services once they have been assessed as needing help. You do not have to use Direct Payments if you would prefer the local authority to arrange services for you, or you may be able to organize a combination of arranged services and direct payments. Age Concern Scotland produces a separate Factsheet 24s, *Direct Payments from social work*, which explains how these payments work in more detail.

With the introduction of the single shared assessment it is possible that some of your health needs may be identified by the person carrying out the assessment even though they might work for the local authority. They should make any health needs known to your family doctor (GP) or to another member of the primary care team such as a district nurse, chiropodist or physiotherapist, but they should only do this with your permission. If you *only* need health care, you should approach your family doctor or other health worker. Age Concern Scotland Factsheet 44, *NHS services and older people* describes the type of services which may be available through your doctor's practice.

Intermediate care services are short term care services which can be provided at home or in a care home and can involve both health and socialwork departments. They are intended to prevent people from having to go into hospital or remain in hospital unnecessarily.

An older person's needs might include housing and transport. In practice such needs are not generally met under community care provisions but they could be. For example, it would be possible for the social work department to assist you with transport to a luncheon club instead of providing you with meals at home. The local authority might also provide you with more suitable housing on the basis of your community care needs even though you might not be a high priority on the Council's housing department waiting list. A 1998 High Court judgement, *R v Bristol City ex parte Penfold*, confirmed this, ruling that local authorities can provide housing under section 21 of the *National Assistance Act 1948*. Housing departments are being encouraged to work more closely with the agencies responsible for meeting social and health care needs and housing needs should be identified within the single shared assessment.

4. The local authority's duty to assess

There are three different circumstances under which your local authority must carry out a care assessment. These are set out in Acts of Parliament:

- if you appear to the local authority to be in need of a community care service *Social Work(Scotland) Act 1968*, s12A (amended);
- if you are disabled (*NHS and Community Care Act 1990*, section 47; and *Disabled Persons (Services, Representation and Consultation) Act 1986*, section 4); *Social Work (Scotland) Act 1968*, s 94;
- if you help to look after someone else (*Disabled Persons (Services, Representation and Consultation) Act 1986*, sections 4 and 8; *Social Work (Scotland) Act 1968*, s 12A and 12AA (amended)).

In practice this means that if you think you might need a community care service, you can ask the local authority for an assessment of your needs. You can also ask if you are disabled. If you are already receiving a service and you feel that your needs have changed, you can ask for another assessment. If you are caring for someone else, you can ask both for their and your own care needs to be assessed. Even if you are not actively 'caring' for someone you can ask for an assessment on their behalf - for example, on behalf of a relative or neighbour - although the social work department will want to make sure that you have the person's permission to do so.

4.1 If you 'appear to be in need' of community care services

Section 12A of the *Social Work (Scotland) Act 1968* says that you should have a care assessment if it appears to your local authority that you *may* be in need of a community care service which it *may* arrange or provide. Community care services are those defined in the *NHS and Community Care Act 1990* - see section 3 of this factsheet. This wording is important because it means that when local authorities are deciding whether they will offer you an assessment, they must *only* take into account whether you might need one or more of the community care services which they have the power to provide or arrange. Local authorities must therefore undertake care assessments of those who are seeking care services which the authority has the power to provide or arrange even if it is not currently doing so. This was confirmed in the legal judgement referred to above, in section 3 *R v Bristol City Council ex parte Penfold, 1998*.

Local authorities are not obliged to offer a care assessment for community care services to someone who has no difficulties carrying out the usual tasks of daily life for themselves.

4.2 If you are disabled

Section 12A of the *Social Work (Scotland) Act 1968* says that if, during an assessment of someone who 'appears to need' community care services, the person is found to be disabled, the local authority must assess the person for their needs under the *Disabled Persons Act 1986* at the same time as they are assessed for their need for community care services as described above.

If your local authority has not done this - or has not told you that it has done so - you should ask why. If you are disabled, you should tell the local authority of your disability when you ask for an assessment.

Some older people are 'registered' with the local authority as having a disability. You do not have to be registered in order to have a care assessment, but you do have to meet the definition of disability as set out in legislation. Most older people who need help because of mental health problems or because of chronic illness or disability - such as arthritis, effects of stroke, blindness or loss of hearing - will come under the category of 'disabled'. Age Concern Factsheet 32s, *Disability and ageing: your rights to social services*, provides more information on the legal position in this respect. The Royal Association for Disability and Rehabilitation (RADAR) and Disability Rights Commission can provide further information for people with disabilities - their addresses are given in section 14.

4.3 If you help to look after someone else

A carer is anyone who helps to look after another person - for example, a husband or wife, a partner, a child or another relative, or a friend or neighbour.

Under the *Social Work (Scotland) Act 1968* local authorities must take account of the ability of the carer to continue to provide care on a regular basis. The person who carries out your assessment should normally ask your permission before talking to your carer about your needs.

Your carer can also ask for their own care needs to be assessed when your care needs are being assessed or reassessed. This right is set out in the *Carers Recognition and Services Act 1995*, and applies to anyone who provides, or intends to provide, a substantial amount of care on a regular basis. The *Community Care and Health (Scotland) Act 2002* extends this right, giving carers the right to have their needs assessed even if the cared-for person does not want to be assessed. It is a duty for local authorities to inform carers of their right to an assessment. Further information for carers can be obtained from the charity Carers Scotland - see section 13 of this factsheet.

4.4 What to do if the local authority refuses to assess your care needs

Some local authorities may 'screen' people before agreeing to carry out an assessment.

You might be asked a few questions on the telephone in order to establish whether your needs might qualify you for help from the social work department. Your financial circumstances should have no bearing on whether the local authority carries out an assessment or not.

If this happens to you, and you feel that your needs have not properly been considered, you should write to state your case, and ask for the decision to be reconsidered. Make sure that your local authority is fully aware of your situation and has all the relevant information. For example, if you are disabled, make sure that you have explained this to the authority. If your local authority still refuses to assess your care needs, ask it to confirm this decision to you in writing, setting out its reasons for refusing. See section 12 for your options if you are in this situation.

5. Finding out about assessments

Each local authority produces its own assessment procedure which should tell you:

- who will be eligible for assessment;
- how the assessor will decide what services should be provided;
- how and where to apply for an assessment;
- how long you might have to wait for an assessment;

- which needs the local authority has said it will be able to meet; and
- how to make representations or complaints.

The information should be easily accessible for everyone in your community, including people who are blind or partially sighted, and people who only speak or read languages other than English. If you cannot obtain this information, you should complain to the social work department, or contact your local councillor. Your local Age Concern may be able to help you find out more about assessment.

5.1 How quickly must the assessment be carried out?

There are no national rules which set out how quickly a local authority must carry out a care assessment following your request, although many local authorities set and publish their own standards.

Different rules apply to the discharge of hospital in-patients. If you are currently in hospital, Factsheet 37, *Hospital discharge arrangements and NHS continuing health care services*, explains how the process leading up to your discharge from hospital should be managed.

5.2 Different levels of assessment

The Single Shared Assessment Process uses four types of assessment; **Simple assessment**, **comprehensive assessment**, **specialist assessment** and **self assessment**. The four types of assessment will require differing levels of involvement by social work services or health staff or both.

Simple assessment is where your stated need or request for services are straightforward and can be dealt with by a 'low level' response; organising a hand 'grab rail' for the bath for example.

Comprehensive assessment is more likely to involve people from different agencies, such as health or housing and it may require them to each contribute services to meet your needs.

Specialist assessment can apply to simple or more complicated needs that require involvement of a professional with recognised expertise, such as an occupational therapist.

Self assessment is where you identify your own needs and propose solutions to meet them. This can be the only assessment or it can happen together with other assessments.

It may be carried out by more than one person, for example by a nurse and a physiotherapist, as well as the person from the social work department.

5.3 Where will the assessment take place?

There is no national rule about where the assessment may take place. Depending upon your circumstances, an assessment might best be carried out in your own home or undertaken in hospital and then followed up at home as appropriate. An initial assessment could also be made at a social work office, day centre or resource centre.

There may be arrangements to carry out assessments at your GP's surgery, or at the local health clinic. For some people in hospital it may be appropriate to do part of the assessment in their own home, to see how they will manage on their return. Age Concern Factsheet 37s, *Hospital discharge arrangements and NHS continuing health care services*, has more information for people in hospital.

6. The assessment process

The assessment process should consist of three parts:

- assessment of needs and circumstances;
- identification of needs which should be met by the local authority under its eligibility criteria (ie, decision to provide services); and
- financial assessment as appropriate.

These stages should be undertaken separately although in practice this may be difficult to distinguish. The local authority should not take the individual's finances into account at an earlier stage and use this as a reason not to arrange services. The authority also has a responsibility to arrange care in a care home for people who are assessed as requiring it but to whom it is not otherwise available (see section 10).

Despite having to comply with the *Single Shared Assessment* guidance, each local authority will have its own approach to the task of assessment.

The complexity of the assessment offered should reflect the individual's needs and circumstances and a flexible approach is encouraged to achieve this end.

6.1 Taking part in an assessment

Local authorities should ensure that individuals are active partners in their own assessments. In addition, where a person is cared for, the local authority must take account the views of their carer where this is practical and reasonable. Assessments should be carried out in such a way that you:

- gain a better understanding of your situation;
- identify the options that are available for managing your own life;
- identify your needs from any help that is provided; and
- understand the basis on which decisions are reached.

You might find it useful to make a list of things you find difficult to do, so that you can discuss these when your assessment takes place.

Sometimes people who are ill or disabled have 'good' days when they find things easier to manage than on 'bad' days. Keeping a kind of diary in which you note things which can be difficult but which you can sometimes manage, as well as things which are always difficult, can also be helpful to refer to during the assessment.

The assessment of your needs should not be limited to physical needs. Your emotional and psychological needs should also be taken into account. For example, if you are going to live in a care home, one of your needs may be to find a home near a relative so that visiting is easy; or you may have particular cultural, religious or dietary needs. Make sure that you tell the person carrying out the assessment about *all* your needs.

The assessors should not make any assumptions about the level or quality of support that might be available from a carer without agreeing this first with the relevant parties. If you are a carer, or you are planning to care for someone else, think about the help which you feel you would be able to give, as well as the tasks which you will not be able to do and make sure that you tell this information to the person carrying out the assessment. Carers are also entitled to assessments of their own needs and should request this if desired.

Often, those carrying out assessments look at people's needs in terms of what services they know are on offer, rather than looking at what the person feels they need. If you need help with doing your shopping, an offer of meals on wheels, for example, may not be appropriate. Guidance from the Scottish Executive emphasises that services should be developed which reflect people's needs, and not 'taken off the shelf' when they are not really suitable.

7. Eligibility criteria for services

Once the care assessment has been completed, the local authority has to make a decision about whether or not it will provide or arrange services for you. It makes these decisions by comparing your assessed care needs with eligibility criteria which it has set for community care services.

7.1 Local criteria

- there are no national eligibility criteria for community care services. Each local authority sets its own criteria, and so there are differences around the country. Eligibility criteria are set and agreed by each local authority's social work services Committee, which is made up of locally elected councillors.

Because eligibility criteria are set locally, Age Concern Scotland cannot give detailed information on the criteria in particular areas.

Local authorities can take their own resources into account when setting eligibility criteria - but the level of resources cannot be the *only* factor. In addition, local authorities cannot use a lack of resources as a reason for only providing *some* community care services (such as care in a care home) but *not* other services (such as home help/home care or meals on wheels). Once a local authority has established that your needs fall within its eligibility criteria, it cannot use lack of resources as a reason for not meeting your needs (*R v Gloucestershire County Council ex parte Barry, 1997*).

7.2 When criteria change

The local authority will usually review its eligibility criteria for community care services from one financial year to the next. Financial years run from April to the end of March the following year.

Reviews can be brought forward if there are major or unexpected changes which may have consequences for the authority's plans.

If the criteria are changed and become more restrictive, you may find that you no longer qualify for as much help as before. If criteria become more generous, more help may be available to you. However, before your local authority makes any changes to your services, it must first assess your care needs - as described in section 7 - and compare these with the new criteria. If your reassessed care needs meet the new criteria, then your local authority will have a duty to meet those needs by providing or arranging services. See section 12 for what you can do if your services may be reduced following a reassessment under new criteria.

8. Provision of services

Once your assessed needs have been compared with your local authority's eligibility criteria, your local authority social work department has a duty to meet your needs as soon as is reasonably practicable. Once an assessment has shown a need for services to be provided according to the local authority's eligibility criteria, a lack of financial resources is not a valid reason for the authority to fail to provide those services. In doing so, the local authority is entitled to exercise flexibility about how those needs are to be met (*R v Kirklees MBC ex p Daykin*), but see also section 10 below, if the service decision is a recommendation for you to live permanently in a care home.

The services you receive may be described as your 'care package'. For example, this could include a home help service and meals on wheels, as well as regular respite care.

8.1 The care plan

Once the local authority has decided that it should provide or arrange help for you it should then draw up a care plan. You should be provided with a copy of the written record of the care plan. This should contain, as a minimum, the following information:

- a note of the eligible needs and associated risks;
- the objectives of the service provision and preferred outcomes;
- contingency plans for managing any emergency changes;

- details of the services to be provided, any charges the individual has been assessed to pay and whether a direct payment has been agreed;
- support which carers and others, such as voluntary agencies, are willing to provide; and
- a review date.

If your care plan is not very detailed it can cause problems for you, because if you do not know what help you are supposed to be getting, you cannot complain if you don't get it. Some local authorities provide very detailed care plans which clearly set out who will provide each service, which organisation they work for, when they will arrive and leave, and what tasks they will be doing. Others provide more limited information. If you need to know more about what help is being provided or arranged for you, ask the person who has drawn up the care plan to explain this in more detail.

A central requirement of the *Single Shared Assessment* is that in all cases a summary of assessment information should be produced, which will cover basic personal information, assessed need, important medical conditions and should include a summary of the care plan.

You have a right to obtain a copy of personal information about you which the social work department holds. Your request must be made in writing. The local authority may charge you an administration fee, but this cannot be more than £10 at the time of writing. You can request the social work department to amend any of the information held which you believe is inaccurate.

However, there are circumstances where social services can refuse to let you see some of the information held on your personal file - for example, when the social work department feels that the material would cause the individual serious physical, mental or emotional harm; or when information is held for the purposes of preventing crime or apprehending offenders and disclosure is likely to be prejudicial to these purposes.

Sometimes there can be difficulties if you are caring for someone and need to see their care assessment and care plan. But there would be nothing to stop the person you care for choosing to share the information with you. If the care plan hinges on you providing care for someone else, then you should ask the local authority to share the information with you.

8.2 What happens if someone refuses services?

The local authority has no general power to make someone to accept help against their will. There is some legislation which can be used to require someone to receive services, but only in very particular circumstances. Such action requires the agreement and involvement of health professionals, and sometimes may also involve the courts. For example, section 47 of the *National Assistance Act 1948* can be used to require someone to live in a care home rather than their own home should the person be:

- suffering from grave chronic disease or, being aged, infirm or physically incapacitated, be living in unsanitary conditions; and
- unable to devote to themselves, and not be receiving from others, proper care and attention.

Section 47 of the *National Assistance Act 1948* can also be used to require someone to receive services in order to: 'prevent injury to the health of, or serious nuisance to, other persons'. *The Mental Health (Care and Treatment) (Scotland) Act 2003* can be used to require someone to stay for a period in, for example, a psychiatric hospital or unit (often known as being 'detained')

8.3 What to do if you disagree with the authority's assessment

It is possible that after the care assessment your local authority will decide that your needs do not meet its criteria for any of the services it arranges or provides. Alternatively you may be offered assistance which you feel is inadequate to meet your needs. The authority should put its decision, and the reasons for it, in writing and make a copy available to you. Before making this decision the authority should satisfy itself that your needs will not significantly worsen or increase in the foreseeable future as a consequence of lack of help.

You should be made aware that the council's complaints procedure (see below) can be used to challenge the local authority's position. See section 12 for details of this and other remedies that may be available. You should also be advised that if your circumstances change you can approach the authority again for another assessment.

A contact number within the authority should be given. Do not be put off by the outcome of the earlier assessment. The local authority should also be prepared to offer information and advice about other sources of support that might be available to help address outstanding issues and problems.

If you have been assessed by a care trust professional from the health service or from the housing department and told that you are not entitled to services then your first recourse might be to complain to the Health Board or Housing Department to try and resolve the problem. However, bear in mind that the local authority is ultimately responsible for the provision of social work services and you may therefore have a complaint against it if appropriate services cannot be arranged.

The local authority is unlikely to be able to claim that it has discharged its responsibility towards you if you refuse its initial offer of services. Previously a judgement has found that it would require 'manifestation of persistent and unequivocal refusal, rather than a single transgression' (*Kutjim [1999]*) on the part of an individual before the authority could claim to have made all the reasonable efforts that it could to meet the persons needs and thus withdraw from the situation.

Age Concern Factsheet 6, *Finding help at home*, suggests other sources of help, and your local Citizens Advice Bureau or local Age Concern may know about other services in your area. You could also contact The Scottish Helpline for Older People between 10am and 4pm - Monday to Friday.

8.4 Review of assessments

Local authorities should review new service users' needs regularly. Your care plan should contain a review date. Reviews can also be requested at any time by service users, their representatives, care providers or any other appropriate individual or agency, if the individual's circumstances appear to warrant it; for example if the person's needs or circumstances have changed, or existing services are not meeting their needs, or a carer can no longer offer the same level of support.

The local authority may decide, following a review, that you no longer require the services that you have been using, either because your needs have changed or because its eligibility criteria have been altered.

In some cases it may not be practicable or safe to withdraw your service, even though you appear to fall outside the current criteria, particularly if, by doing so, you are then left 'in serious physical risk'. A High Court judgement, *R v Birmingham City Council ex parte Killigrew 1999* ruled that where care is provided because a person would otherwise be at risk, the local authority must consider why the person's needs have changed since the last assessment before the service is reduced. They must also take account of any other information which they should reasonably be aware of which indicates that reducing care might put the person at risk. In the *Killigrew* case, the Judge criticised the local authority for overlooking concerns raised in carers' day to day records.

If your services are withdrawn or reduced, your local authority must tell you about your right to appeal against the outcome of the reassessment by using the complaints system - see section 12. If your local authority tries to reduce or withdraw services without reassessing your care needs, you could also use the complaints procedure.

8.5 What happens if someone needs help urgently?

Local authorities can temporarily provide or arrange services before a care assessment has been carried out. They would do so if, in their view, the person's situation or condition was such that services were required as a matter of urgency.

Once any temporary services are in place, the local authority is required to carry out a care assessment 'as soon as is practicable'. The person should be advised of this and that services may be withdrawn or changed as a result of the fuller assessment.

9. Care in your own home

The local authority's duty towards you is to provide or arrange services which meet your assessed and agreed needs. There might be several ways in which services could be arranged or provided for you by your local authority which would meet all these needs - for example, by your receiving an intensive level of support in your own home, or in sheltered housing, or by moving to live in a care home.

Where care needs such as these could be met equally well through different service options, the local authority can legitimately offer the option which is cheapest for it to provide or arrange.

This has been confirmed in a legal judgement (*R v Lancashire County Council ex parte Ingham 1996*). If a large amount of care is required to enable someone to remain living in their own home or in sheltered housing it might be cheaper for the person to move into a care home.

Some local authorities set a limit upon the amount of care that they will provide or arrange to support someone in their own home, or in sheltered housing, before suggesting that the person move to a care home. Any such limit should be applied flexibly.

The services you are offered must meet your assessed and agreed needs even if that costs more than the authority's usual limit. If a more expensive package of care in your home would meet your needs in a way that a cheaper care home could not, the local authority cannot insist that you accept the cheaper option on the grounds of cost alone.

9.1 Negotiating over care

In some circumstances, it may be possible for you to negotiate with your local authority or other agency carrying out the assessment on its behalf under the single shared assessment about the care it will provide or arrange. If you would prefer services to help you remain living at home but your care needs could be met by moving to live in a care home and this is the cheaper option to the local authority, it may be possible to ask your local authority to look again at how the services could be provided or arranged in order to help you stay at home.

For example, if you have a carer who is willing and able to help you with some things, you and your carer could ask your local authority if it will agree to some tasks being carried out by the carer, with the authority providing or arranging the rest.

In addition, some older people have asked their authority only to provide the services at home which are, in their view, the most essential; or, they have agreed to services being carried out for shorter periods of time. However, this may mean that you do not get all the help you need. In these circumstances, your local authority might ask you to sign something to say that you understand that the care it will provide or arrange will not meet all your agreed needs - and that you are rejecting the offer of a place in a care home which would meet all these needs. Your local authority may want to make sure you understand that there might be a risk involved to yourself.

Whether or not you have a carer, you may want to make sure that the local authority has involved the health and housing authorities in your area, if you have needs which they should be meeting. You might want to try to find out what other services are available in your area which could supplement the social services' help - Age Concern Factsheet 6, *Finding help at home*, suggests other sources of help. Or you may have sufficient income or savings to be able to buy some additional help over and above the level of services from the local authority.

These sorts of compromises and negotiations may be far from ideal, but some older people have found this approach to be a helpful way of achieving their wish to remain living at home. However, even where negotiations are possible, this does not mean that the local authority can ignore any duties and responsibilities towards you which are set out in law.

10. Receiving care in care homes

Ultimately you may need or wish to move and live permanently in a care home. The local authority has a duty, under section 21 of the *National Assistance Act 1948*, to provide or arrange permanent care in a home for you if you have been assessed as requiring this care and it is 'not otherwise available to you'. There are two circumstances when this is likely to apply:

- when you cannot pay the full cost of your care in a home because the fees are higher than your income and your capital is below the national means test upper limit of £19,000; or
- where your income is high enough to pay for care in full (except for any free personal and nursing care payment you will receive), and/or your capital is above the upper limit, but you are not able to make the arrangements yourself, and there is no one who is willing and able to do this on your behalf.

If you cannot arrange your own care the local authority has no power to oblige a relative or other interested party to do it for you - that person must be willing to make the arrangements as well as able to do so.

If you will be making your own arrangements to move into a care home, Age Concern Factsheet 29, *Finding care home accommodation*, may be helpful.

If you subsequently become eligible for financial support because, for example, the amount of your capital has fallen as fees for the care have been paid, you should again approach your local authority social work department for help. Your local authority will be obliged to assist you if the care you need is no longer otherwise available.

It may take some time for the authority to carry out the formalities necessary for it to agree funding. It may be worth approaching your authority and requesting that it carry out an assessment, or reassessment, a few months before you will become eligible for financial support. If you are not sure whether there might be delays in your area, ask your authority, and if possible, ask that this be confirmed to you in writing.

Even while you are self funding the NHS is responsible for meeting the cost of any care which you require from a registered nurse. You should be assessed to establish the level of your nursing need and the NHS will make a payment directly to the home, which should then be taken into account in the calculation of your fees.

11. Paying for services

When a local authority provides or arranges services for you, in most circumstances you will be asked to contribute towards the cost of care in a care home. In many circumstances local authorities have to charge you for care in a care home. Information on how these contributions will be calculated are explained below.

If you have more than **more than £19,000 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 £19,000. 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.

If you own capital between £11,750 and £19,000 both income and capital are taken into account in the means-test. Capital of between £11,750 and £19,000 will be assessed to show an assumed or tariff income. Every £250, or part of £250, of capital between £11,750 and £19,000 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 £11 per week income.

If you have capital between £11,750 and £19,000 make sure that your contributions are reviewed each time your capital drops into the next £250 'band'.

Capital below £11,750: No tariff income is assumed from capital below £11,750.

11.1 Paying for care at home

Each local authority is able to set its own charging policy for non-residential services but these have to comply with certain minimum requirements. The Government has issued guidance setting these out. If you think that your assessed charge is unreasonable you can make a complaint to the authority. Further details can be found in Age Concern's Factsheet 46s, *Paying for care and support at home*.

11.2 Paying for care in a care home

If you are assessed as needing permanent care in a care home (or a temporary stay of longer than eight weeks), the means test is done according to national rules, which are described in Age Concern Factsheet 10, *Local authority charging procedures for care homes (including free personal care)*. Age Concern Factsheet 38, *Treatment of the former home as capital for people in care homes*, may also be of interest if you own a property. Factsheet 39, *Paying for care in a care home if you have a partner*, may be useful for residents who have a partner or spouse.

12. What to do if there is a problem

For many people, the assessment will be a chance to say what they need, and to have appropriate help provided. Age Concern hopes that this will be true for as many people as possible. However, some people may have problems. Do not be put off if it seems that nothing can be done for you.

Make sure you ask for a written statement of any care assessment which takes place, and for the reasons why the help you feel you need cannot be offered. Then use the local authority's complaints procedure to put your point of view in writing.

12.1 Using the complaints procedure

Every local authority social work department must have a complaints procedure, and must be able to give you information about it. Your local authority must have a designated person who deals with the complaints procedure and who can help you use it. This person should also tell you how to contact someone to help you put your point of view, if you need this help. Someone who helps you put over your point of view is often called an 'advocate': that is, they may speak or write on your behalf, but the term advocate is not the same as being a lawyer.

Government guidance sets out three stages to making a complaint or a representation to your local authority's social work department. Firstly, there is an informal stage at which it is hoped most problems can be resolved. This could involve you (or someone on your behalf, perhaps a carer) contacting the person at social services you usually deal with to see if they (or their manager) can work with you to find an acceptable solution.

If this is not successful - or, if you would prefer to ignore the informal stage - you can use the second stage to make a formal complaint, usually in writing, to the designated officer described above. Once your formal complaint has been received, the office should investigate and tell you their findings within 28 days. If this is not possible, you should receive an explanation of the situation within 28 days; the officer must then write to you with their findings within three months.

If you are still unhappy, you can ask for a review panel to consider your complaint. Once you have received the designated officer's findings, you have 28 days in which to ask for a review by a panel. The review panel is made up of at least three people. The person who chairs the panel must be independent of your local authority. Again the review panel should meet to re-examine the local authority's decision within 28 days of receiving your request to do so. You should be told in writing, at least 10 days in advance, of the time and date of the meeting and where it will be held. You should be invited to attend the meeting. If you wish, someone can go with you and speak on your behalf, but this cannot be a solicitor or barrister who is there in a professional capacity.

Once you have exhausted the local authority complaints procedure, you can approach the Scottish Public Services Ombudsman to see if the Ombudsman will investigate your complaint.

The Scottish Public Services Ombudsman can be contacted at: 4 Melville Street, Edinburgh, EH3 7NS, tel: 0870 011 5378 (national call rate), fax; 0870 011 5379 (national call rate), email: enquiries@scottishombudsman.org.uk.

12.2 Other action you might take

You might also wish to contact your local councillors, to see if they will support you in putting your case. You could also get in touch with relevant support groups. Age Concern Factsheet 6, *Finding help at home*, gives the addresses of national organisations. You may also wish to contact your Member of the Scottish Parliament if you feel that the MSP should know that the system is not working for you.

Age Concern Factsheet 32, *Disability and ageing: your rights to social services*, describes other action which you might want to take, including legal remedies.

If you wish to seek legal advice, Age Concern Factsheet 43, *Obtaining and paying for legal advice*, may be helpful.

13. Further information

Carers Scotland, 91 Mitchell Street, Glasgow G1 3LN, tel: 0141 221 9141, fax: 0141 221 9140, email: info@carerscotland.org. Carers Scotland offers general help and advice for all carers.

Disability Rights Commission (DRC), for enquiries contact the DRC Helpline, Freepost MID02164, Stratford-upon-Avon, CV37 9BR, tel: 08457 622 633 (local call rate), fax: 08457 778 878 (local call rate), textphone: 08457 622 644 (local call rate), email: enquiry@drc-gb.org, website: www/drc-gb.org. Set up to promote civil rights for disabled people and to work towards the elimination of discrimination against disabled people. The DRC Helpline provides information and advice about all aspects of the *Disability Discrimination Act*.

SAMH (The Scottish Association for Mental Health), Cumbrae House, 15 Carlton Court, Glasgow, G5 9JP, tel: 0141 568 7000, fax: 0141 568 7001, email: enquire@samh.org.uk, web site: www.samh.org.uk.

The SAMH information service can help if you have a general enquiry on mental health. They are also able to offer free legal advice. You may simply be looking for a self help group in your area or have a serious complaint about your treatment.

Royal Association for Disability and Rehabilitation (RADAR), 12 City Forum, 250 City Road, London EC1V 8AF, tel: 020 7250 3222, textphone: 020 7250 4119, fax: 020 7250 0212, email: radar@radar.org.uk, website: www.radar.org.uk. Offers advice and information on access, housing, holidays, mobility, education, employment benefits and social service provision.

14. Further information from Age Concern

The following factsheets may be relevant:

Fact sheet 6	<i>Finding help at home</i>
Fact sheet 10s	<i>Local authority charging procedures for care homes (including free personal care)</i>
Fact sheet 24s	<i>Direct Payments from social work</i>
Fact sheet 29	<i>Finding care home accommodation</i>
Fact sheet 32s	<i>Disability and ageing: your rights to social services</i>
Fact sheet 37s	<i>Hospital discharge arrangements and NHS continuing health care services</i>
Fact sheet 38	<i>Treatment of the former home as capital for people in in care homes</i>
Fact sheet 43s	<i>Obtaining and paying for legal advice</i>
Fact sheet 44s	<i>NHS services and older people</i>
Fact sheet 46s	<i>Paying for care and support at home</i>

If you would like

- 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

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ.

For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

Age Concern's series of over 40 factsheets is available as a subscription service to those whose work involves older people. For details please call 0870 500 99 66 (national call rate) and ask for our factsheet subscription leaflet.

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, 113 Rose Street, Edinburgh EH2 3DT. Find out more about Age Concern Scotland online at www.ageconcernscotland.org.uk, or Age Concern England at www.ageconcern.org.uk.

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, a confidential and impartial service managed by Age Concern Scotland, tel: 0845 125 9732 (local call rate), Monday to Friday 10am - 4pm. The address is Age Concern Scotland, 113 Rose Street, Edinburgh EH2 3DT

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No factsheet can ever be a complete guide to the law, which also changes from time to time. Therefore please ensure that you have an up to date factsheet and that it clearly applies to your situation. Legal advice should always be taken if you are in doubt.

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