

NHFA Infosheet 2

Treatment of property

In order to qualify for local authority support in meeting nursing home or residential care costs a person must have capital of £21,500 or below. Capital includes the value of a previously occupied property subject to the following rules:

Disregarded Property

Property to be disregarded will include:

(Gender) - The male form has been used for the ease of writing. The words 'he' or 'his' also can be taken as referring to 'she' or 'hers')

- The value of a resident's dwelling if his stay in a care home is temporary and he intends to return to the dwelling and the dwelling is still available to him.
- Only one dwelling can be disregarded in these circumstances.

Where the resident's stay is regarded as **permanent** his former dwelling can be disregarded for a **period of upto 12 weeks** or **totally** if it is occupied in whole or part by:

- a) The resident's former partner (who is not estranged or divorced from the resident).
- b) A relative of the resident who is aged over 60, or is incapacitated.
- c) A child under the age of 16 years who the resident is liable to maintain.
- d) A lone parent who is the resident's estranged or divorced partner

The local authority also has the discretion to ignore the property in special circumstances, for example, if it is the sole residence of a previous carer of the resident who gave up their home in order to care for the resident. In such circumstances the property will be taken into account if the carer were to die or move out. The benefits agency does not have this discretion for Pension Credit or Income Support purposes.

Jointly Owned Property

Where a property is jointly owned by the resident and another person whose joint ownership does not enable the property to be disregarded as above, the local authority will take the resident's share into account. However, in doing so it is the value of that interest which is taken into account bearing in mind:

- the resident's ability to re-assign the beneficial interest to somebody else.
- there being a market i.e. the interest being such as to attract a willing buyer for the interest.

It may well be construed that because a joint owner has a right to occupy the property it is unlikely that there would be a willing buyer prepared to share in that right to occupy it. The only person who may be interested in purchasing the share would therefore be the joint owner and effectively the 'market value' could be nil. Legal advice should be sought in these circumstances.

The rules for Income Support purposes are very similar in this respect. Following a Commissioner's decision CIS/ 15936/1996 it was held that the valuation of jointly owned property should be based on the actual market value of the claimant's share and this value may depend on whether there would be a willing buyer of the claimant's interest in the property.

If there is a disparity between how the local authority and the benefits agency value the property, which results in the resident not being entitled to the income support element contributing towards his care costs, the amount to be paid by the local authority is that much more.

Where the local authority is unsure about the resident's share, or their valuation is disputed by the resident, a professional

valuation should be obtained. The name on the deeds of the property should establish ownership, however, if ownership is disputed and a resident's interest is alleged to be less than seems apparent from initial information, the local authority will require written evidence on any beneficial interest the resident, or other parties possess.

Twelves Weeks Property Disregard

This is effective for all people who enter care homes permanently. The local authority will disregard the value of property for twelve weeks and resident's will only have to contribute their assessed income less £20.45 personal expenses towards the care home fees. To be eligible for this funding:

- You must be assessed as needing **permanent** residential accommodation which can be accommodation provided by either a local authority or an independent care home.
- The twelve week property disregard provides financial assistance from the local authority from the date of being assessed as requiring permanent residential care for a period of twelve weeks, or until the property sells, if sooner.
- Your other capital apart from the value of the property must be below £21,500 and your income must be inadequate to meet the full cost of your care.

The twelve week property disregard is mandatory and local authorities are under a statutory obligation to apply it once they are aware of a resident to whom it applies. Delays by local authorities in providing this funding does not affect the resident's entitlement to it and could render them to be liable to reimburse residents who have consequently paid a higher contribution towards their care costs than they should have during this mandatory disregard period.

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NHS Nursing Care Contribution

Residents of nursing homes entitled to a contribution towards their nursing care from the NHS will undergo an assessment for the NHS contribution which will be paid after the twelve week property disregard period has expired. During the twelve week disregard period the difference between the local authority's standard rate for the nursing home fees and the residents assessed charge will be met by the local authority and health authority.

Top-ups for More Expensive Accommodation

Local authorities would normally only pay their standard rate for accommodation, which is likely to be less than care homes normally charge. In these circumstances residents entitled to the twelve week property disregard will be entitled to top-up the local authority contribution from disregarded income, earnings or capital with the proviso that:

- The top-up during the twelve week period must not exceed the lower capital limit i.e. £13,000 (equivalent to £1088.33 per week)
- The level of tariff income assessed (£1 for each £250 of capital between £13,000 and £21,500) remains the same even though the capital may reduce as a result of topping-up during the twelve week period.

Beyond the Twelve Week Period – The Deferred Payments Agreement

Individuals who have not been able to or do not wish to sell their homes to pay for their care may enter into a deferred payments agreement with the local authority. The contribution from the local authority will be secured against the value of their property. This facility is open to those who do not wish to or cannot sell their home and where their other assets are less than the upper capital limits and their income is not sufficient to cover their

fees. Local authorities have discretion over whether to operate this scheme for example, they may not wish to enter into an agreement whereby the cost of the chosen care may not be affordable by the individual over the long term.

There are possible advantages for individuals accepting a deferred payments agreement being that any growth in the property value will contribute towards the loan, they may be able to let the property and contribute the income towards the fees and, the decision to sell the property can be deferred whilst all options are being considered. However, there are also possible disadvantages:

- The loan is only deferring a liability repayable from the eventual proceeds of the property.
- The property will require maintaining and insuring.
- Letting property can often be troublesome and rental income is taxable.

- The level of local authority funding may restrict the choice of accommodation unless a top-up is affordable over the long term.
- Interest will accrue on the loan 56 days after the resident dies.
- Councils may ask residents to cover, up front, the costs of land registry searches and any other such legal costs.
- If it is intended to sell the property entitlement to attendance allowance and pension credit continue. However, if the property is not being sold it may be treated as capital by the DWP and, subject to its value, entitlement to pension credit could cease.

By selling the property and purchasing an Immediate Need Care Fee Payment Plan, liability to fees over the long-term can be limited to the cost of the plan, whilst investing the balance of the proceeds could provide an income and the potential for capital growth.

Benefit Rates 2007/08

	Local Authority deferred loan Property not on the market (£)	Local Authority deferred loan Property on the market (£)
Cost of care per week	350.00	350.00
Attendance allowance (not means tested)	(64.50)	(64.50)
Pension credit with severe disability addition		167.50
State Pension	87.30	–
Personal expenses allowance	(20.45)	(20.45)
	(66.85)	(147.05)
Local authority charge against property/ shortfall		
First 12 weeks local authority funding	Nil	Nil
Second 14 weeks shortfall	218.65	138.45
Overall cost from capital over 26 weeks	3,061.10	1,938.30

If it took 26 weeks to sell the property the current saving having the property on the market can therefore be up to £1122.80 less land registry search and legal costs if a deferred loan agreement is entered into. (Councils may ask residents to cover, up front, the cost of land registry searches and any other legal costs.)

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Top-ups for More Expensive Accommodation

As with the twelve week property disregard period individuals who choose more expensive accommodation than the local authority would normally pay for may be entitled to top-up their fees from:

- Disregarded income, earnings or capital or,
- Other capital resources, including the value of the property that is subject to the deferred payments agreement with the proviso that the resident must be left with total capital resources of no less than the means test lower capital limit i.e. £13,000.

Where the top-up is part of the deferred payments agreement it is eventually repaid when the property is sold. Local authorities may be reluctant to enter into such agreements if they are not satisfied that the resident contribution including the top-up can be met for the duration of the person's stay in the care home.

The ability for individuals to provide their own top-ups only applies to those benefiting from the twelve week property disregard or the deferred payments agreement. In other circumstances where the local authority is funding the care costs a top-up may only be paid by a third party who the local authority considers is able to over the duration of the third party agreement.

Council Tax

Properties that have been left empty by someone who has moved to receive care in a care home/hospital or elsewhere are exempt from Council Tax.

NHS Nursing Care Contribution

Residents of nursing homes participating in the deferred payments agreement will, subject to assessment, be entitled to a contribution towards their nursing care from the NHS as if they were normal self-funders.

Long-term affordability

Every case must be considered on its own merits taking into account life expectancy, the property market, the possible loss of DWP benefits, the feasibility of letting against selling and investing in alternative financial products and the families wishes to remain independent from State provision.

Before considering whether to be totally independent of the State there are some important factors to be borne in mind. During any period of interim funding whilst your property is on the market the care home fees are likely to be greater than your income. How will this shortfall be paid? Can a relative afford it or, will the home owner allow it to accrue over the long term if the property does not sell quickly?

How much will the property sell for and, will this provide sufficient money to meet care costs for life? If not, and the capital falls to below £21,500, will the person qualify for help from the local authority? i.e. be assessed as needing the level of care they have chosen themselves at a price the local authority are prepared to pay.

Will the care home owner agree to keep somebody as a resident in the same accommodation if their capital falls to £21,500 and can only pay what the local authority offers?

A sensible precaution would be to discuss these points with the social services department, the chosen home owner and your NHFA adviser before proceeding.
Your NHFA report will illustrate the affordability of your chosen care.

Placing a Charge on Property

Where a resident has a beneficial interest in land that is not disregarded and fails to pay an assessed charge for his accommodation or chooses to participate

in a section 55 deferred payment agreement., the local authority can place a charge on the property to pursue the debt and recover the cost of the accommodation paid on behalf of the resident. In arriving at the value of the property to be treated as capital the local authority will allow ten percent of its value as notional selling costs. The balance of the value will be treated as notional capital and the charge against the property will continue to accrue until such time as that notional capital after deducting the charge is deemed to be below £21,500 and the authority can begin to provide financial support.

Where the land is jointly owned the resident's interest is technically in the proceeds of sale of that land and not an interest in the land itself. In this case section 22 (8) of HASSASSA has the effect of preventing the registration of an interest in the proceeds of sale of land. The authority may therefore only register a less effective caution.

Interest can only be charged on the sum due to the local authority under a deferred payment agreement from 56 days after the resident for whom accommodation has been provided dies.

In arriving at the value of property not disregarded the Local Authority should allow 10% of the market value as an allowance for selling costs.

Property Rented

Will be treated as a capital asset and any rent received will be disregarded as income, although it could be paid to the local authority towards the standard charge.

The Marital Home

For the purpose of the financial assessment, when one member of a couple enters residential accommodation, the value of his/her home is disregarded as long as it is occupied in whole or part by his/her

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partner. Should the spouse remaining at home decide to sell the property and move into smaller less expensive accommodation, the resident's 50% share of the proceeds could be taken into account in the charging assessment. However, should the resident wish to make available part of his/her share of the proceeds to the spouse to enable the purchase of the smaller property, the local authority guidance states that it would be reasonable for this amount to be disregarded, leaving only the surplus of the partner's share to be taken into account.

Professional advisers should give consideration to whether jointly owned property should be held as a joint tenancy or as tenants in common. The advantage of the latter would enable a spouse at home to leave their share of the property to an alternative beneficiary rather than to a spouse in a care home who would need to use the value of the property to pay for care costs. The change in status of ownership can be effected by either party without consultation.

Seek advice

The financial and legal implications to be considered when paying for care are wide, and require careful planning. Older people or their relatives should seek specialist advice, before taking on any commitment that they are unsure of being able to afford. They should seek advice on what their entitlements are from the state, what legislative matters they should attend to and how best to use their capital and income to meet ongoing care costs and possible changing care needs.

Taking the worry out of paying for care. NHFA advice is available to all regardless of means. Our aim is to enable older people to afford the cost of their chosen care for as long as they need it.

Since 1992, the NHFA, through its experience specialising in long-term care funding, has developed a range of financial solutions to meet most care home residents' needs. This not only enables care costs to be met but also enables many to preserve as much as possible of their original capital and with that, their independence, dignity, right of choice and, as many older people wish, the ability to leave an inheritance.

NHFA advice is available to all regardless of means

Capital limits and DWP benefits referred to in this sheet relate to residents in England Only

Further information and advice on paying for care or free copies of the NHFA Long Term Care Guide can be obtained from:

St Leonard's House, Mill Street,
Eynsham, Oxford, OX29 4JX

Care Advice Line: 0800 99 88 33

Telephone: 01865 733000

Facsimile: 01865 733001

Website: www.nhfa.co.uk

E-mail: enquiries@nhfa.co.uk

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