

NHFA Infosheet 4

L.A. charging procedures

Standard Rate

Section 26(2) National Assistance Act 1948 requires local authorities to set the standard rate for accommodation in homes, not managed by the local authority, to be equal to the gross cost to the local authority of providing, or purchasing the accommodation under a contract with the independent sector home.

A contract made with an independent home must include arrangements for the local authority to pay an agreed and specified amount to the home for accommodation.

Assessing Ability to Pay

Where a resident is unable to pay either the standard rate or the actual cost incurred by the local authority, the local authority must assess the residents ability to pay using the regulations of **The National Assistance (Assessment of Resources) Regulation 1992**.

Social Security benefits

Residents are entitled to Income Support at the same rate as if they were living at home. They are not entitled to Housing Benefit. Claims for Attendance Allowance should be made in the normal way, although eligibility will cease after four weeks if the resident is receiving care or financial support provided by the local authority and not paying the full cost.

Personal Allowance

(**Gender**- The male form has been used for the ease of writing. The word 'he' or 'his' can also be taken as referring to 'she' or 'hers'). In assessing the resident's ability to pay, the local authority is required to ensure he retains an amount for personal expenses as laid down in the regulations to spend as he wishes, currently £20.45 per week. (Wales £20.88). (Scotland £20.45)

Couples

Where one or both members of a couple are admitted to residential accommodation

an assessment is carried out on their individual financial resources in accordance with the normal rules.

Where a resident is in receipt of an occupational pension, personal pension or income from a retirement annuity contract and has a spouse not living in the same residential care or nursing home, 50 per cent of that pension should be disregarded if paid to the spouse.

In the case of unmarried couples the local authority can use their discretion i.e. pay back this percentage.

In cases where the resident receives the majority of a couple's income (i.e. an occupational pension) and the spouse at home is left with insufficient income to maintain his or her usual standard of living, the local authority at their discretion can increase the resident's Personal Expense Allowance to enable him or her to provide support for the spouse at home. (**Section 22(4) National Assistance Act 1948**).

Capital

A resident with capital in excess of £21,500 is liable to pay the full standard charge for accommodation or the contracted fee. Capital of £13,000 or less is disregarded. Capital between £13,000 and £21,500 will be taken into account in a resident's tariff income from capital charge, at the rate of £1 for every £250 or part thereof over £13,000. Capital in many circumstances will include the resident's former home. See "Treatment of Property". (Wales £17,250/£22,000, Scotland £12,500/£20,750)

Deprivation of Capital

The local authority may consider that a resident has deprived himself of capital in order to reduce his accommodation charges. A transfer may be identified as deprivation of assets regardless of the time of the disposal if

it was considered to be with the intention of avoiding accommodation charges.

If the local authority decides that a resident has disposed of capital at any time to avoid accommodation charges it may then treat the resident as having notional capital and will treat the resident as if they still have their capital or assets and charge for accommodation accordingly.

This charge will continue until the notional capital has been reduced to an amount which will entitle the resident to local authority support.

Where a resident transfers assets to avoid accommodation charges within 6 months of being assessed as needing residential care under Part III of the National Assistance Act and where that accommodation is being provided by the local authority, Section 21 of the Health and Social Services and Social Security Adjudications Act 1983 gives the local authority power to recover the cost of care from the persons to whom those assets were transferred.

Treatment of Property

Property to be disregarded will include:

- 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 up to 12 weeks or totally if it is occupied in whole or part by:

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

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The local authority 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.

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 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 of any beneficial interest the resident, or other parties possess.

Placing a charge on land

Where a resident has a beneficial interest in land which is not disregarded and fails to pay an assessed charge for his accommodation or chooses to participate in a deferred payments agreement with the local authority towards the care costs, the authority can place a charge on the property to pursue and recover the cost of the accommodation paid on behalf of the resident. 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 through a deferred payments agreement 56 days after the resident for whom accommodation has been provided dies.

Property rented

Will be treated as a capital asset and any rent received can be paid to the local authority to reduce any accruing debt through not paying the standard charge.

Treatment of Income

Certain income can be either partially or totally disregarded but in general most forms of income are taken into account when assessing the charge for accommodation.

Trust Funds

Trust Funds will be examined to identify the type of trust and the resident's entitlement to both capital and income. The assessed charge will depend on these entitlements whether paid to the resident or not.

Liability of Relatives

Where a spouse of the resident appears to have sufficient resources the local authority could legally pursue a 'liable relatives' contribution towards the care home costs. However the Government intended to repeal this by primary legislation in 2007. In the meantime, local authorities have been given extra money not to apply for liable relatives contributions.

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Collection charges from residents and method of payment

Normally, the resident's assessed charge will be collected from him by the local authority, who will then pay the home owner the total agreed fee or, by arrangement and agreement with all parties involved, the assessed charge may be paid direct to the home owner with the local authority making up the balance. However, the local authority will remain responsible for the full amount of the care fees should the resident fail to pay his assessed charge.

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 legal 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

NHFA care advice line 0800 99 88 33
www.nhfa.co.uk

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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