

# NHFA Infosheet 7

## Treatment of couples

For many couples, what on one day may have been a comfortable retirement the next can be devastated if one or both of them require nursing or residential care. In particular, if local authorities in applying their charging procedures inadvertently cause them extreme financial hardship. When advising older people on their financial affairs, it is important to understand both married and unmarried couples' liability to meet care costs as well as their entitlements to State assistance.

### **Both members of a couple assessed as needing residential accommodation**

If both members of a couple are assessed as needing care, the local authority must carry out separate financial assessments according to their own or jointly owned resources. It has no power under the National Assistance Act 1948 or the National Assistance (Assessment of Resources) Regs. 1992 to assess a couple according to their combined resources. Different rules may apply in respect of entitlement to DWP Income Support if it is considered that both members residing in the same care home constitutes being members of the same household. This may depend on whether they share the same room or live in separate rooms or wings of perhaps a dual registered home. There is a strong argument that living in a care home does not constitute living in a household. A submission to a Social Security Appeal Tribunal referring to the case of **Simmons -v- Pizzey (1977) 2 All ER 432** may be successful in this respect.

### **One member of a couple assessed as needing residential accommodation**

If only one member of a couple is assessed as needing residential or nursing home care, that member only should be financially assessed according to their

own and share of joint resources. In practice, many authorities use financial assessment forms that ask details of both members' capital and income. In obtaining this information, it may be said that they are able to advise the spouse remaining at home of their entitlement to DWP income support, however, in many cases, this information will be used to determine whether a liable relative's contribution is appropriate.

### **Liable relatives contributions**

Section 42 of the National Assistance Act 1948 states that spouses are liable to maintain each other if one member is being accommodated at the expense of the local authority. This applies only to married couples.

However the Government sees this as unfair and intended to repeal this by primary legislation in 2007. In the meantime Councils have been given extra money so they do not have to apply the liable relative rules.

### **Varying the personal expenses allowance and treatment of private pensions**

If the spouse remaining at home has been left in financial hardship, the local authority does have the discretion, under Section 22 (4) National Assistance Act 1948, to vary the resident's personal expenses allowance to allow a maintenance payment to be paid to his/her spouse at home. In doing so, however, they must consider the effect such a payment may have on any DWP benefits the spouse at home is already receiving. Such a payment would be regarded by the DWP Benefits Agency as income and may only have the effect of reducing benefit entitlement by the same amount. Where a member of a married couple in a

care home receives an occupational pension, personal pension or income from a retirement annuity contract, half this amount must be paid back to the spouse remaining at home.

In the case of unmarried couples the local authority can apply this rule at their discretion.

Where the resident of the care home has all the financial resources and the local authority does not allow money to be returned to the spouse at home, that spouse can complain. Using the local authority's complaints procedure, complain to the ombudsman or, if that fails, there is no reason why they cannot make their own applications under Section 42 of the National Assistance Act 1948 for the Magistrates Court to order the council to release money for their maintenance.

### **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 in part by his/her 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.

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	Joint Account £	Resident's Single Account £	Partner's Account £
Account balance	60,000	(50%) 30,000	(50%) 30,000
Care fees payable	17,000	8,500	–
	£ 43,000	£ 21,500	£ 30,000
Half each equals	£21,500		
	Resident eligible to State assistance after £17,000 paid	Resident eligible to State assistance after £8,500 paid (saving of £8,500)	

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 nursing home or residential 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.

### Money tip where couples have joint savings

In assessing a resident's entitlement to financial assistance, the local authority will take into account joint savings with a spouse and, until those joint savings fall to £43,000, no financial help is available (i.e. half of £43,000 = £21,500 capital limit). Those residents who are paying for their accommodation from joint savings with a spouse at home, should split those accounts into separate single accounts immediately to benefit from state assistance as early as possible (see table).

### 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.

**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](http://www.nhfa.co.uk)  
E-mail: [enquiries@nhfa.co.uk](mailto:enquiries@nhfa.co.uk)

Member  Group

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

**NHFA advice is available to all regardless of means**

Infosheet 1 Choice and Interim Finance  
Infosheet 2 Treatment of Property  
Infosheet 3 The Legal Framework  
Infosheet 4 L A Charging Procedures  
Infosheet 5 Deprivation of Assets  
Infosheet 6 Case Studies / Top Ten Tips  
Infosheet 7 Treatment of couples  
Infosheet 8 NHS Nursing Care Contribution  
Infosheet 9 Inheritance Tax  
Infosheet 10 Enduring Power of Attorney

NHFA care advice line 0800 99 88 33  
[www.nhfa.co.uk](http://www.nhfa.co.uk)