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Key Points:

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Local authority charging procedures for care homes

This factsheet is aimed at people aged 60 and over and who live in Wales.

Readers living in England or Northern Ireland, can obtain a similar Factsheet 10, *Local authority charging procedures for care homes* available by phoning 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.

Readers living in Scotland can obtain a similar Factsheet 10s, *Local authority charging procedures for care homes* (address and telephone details as above).

Contact details for Age Concern

Northern Ireland:

3 Lower Crescent, Belfast BT7 1NR, tel: 028 9032 5055 (national call rate), Monday to Friday 9.30am to 1pm, website: www.ageconcernni.org.

Contact details for Age Concern

Scotland:

Causewayside House, 160 Causewayside, Edinburgh EH9 1PR, tel: 0845 125 9732 (local call rate), website: www.ageconcernscotland.org.uk.

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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 this factsheet is quite long, it is designed to answer the vast majority of enquiries from older people. Where it may be useful, reference is made to legislation and case law, sometimes in footnotes.

Local authority or council refers to one of the 22 local authorities in Wales. The social **services department** is part of the local authority, and is responsible – amongst other duties – for assessing other 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 services department should be in the telephone directory under the name of the local authority. The town hall or council offices, Citizen's Advice Bureau, and your local Age Concern will also be able to tell you how to contact social services. The local authority with responsibility for you will usually be the one in whose area you live – but see Section 13 if, by making private arrangements to live in a care home, you have moved to a new area.

The **Department of Work and Pensions (DWP)** replaced the Department of Social Security (DSS) in 2001. It is an entirely separate body from the local authority social services department. The Pension Service is responsible for pensions and benefits for older people. Jobcentre Plus deals with people; of working age. For details of your local office check in the telephone book under Jobcentre Plus, social security office or Benefits Agency, or ask at your local advice centre.

There have also been changes recently to the structure and organization of the NHS bodies which deliver and plan health care. On April 1st 2003 the five Health Authorities in Wales were abolished and replaced by twenty-two Local Health Boards. These boards were established as statutory bodies each with its own board and dedicated management team. The Local Health Boards are set up to develop and provide health services based on the needs of the local community. Local Health Boards are accountable to the Minister for Health and Social Services and the Welsh Assembly Government. Boards are usually made up of representatives from various health professionals and contractor services such as pharmacists, dentists and opticians.

NHS Trusts are responsible for meeting the health needs of the population by arranging and commissioning services such as GPs, dentistry, district nurses and NHS hospitals (also called trusts). NHS Trusts are clusters of GP practices covering a total population of about 100,000 people (although the size will vary). Your NHS Trust and local authority may have different boundaries. You can find out which is your NHS trust by asking your GP or Citizens Advice Bureau. Local Health Boards (LHBs) each cover a number of NHS Trusts, and are responsible for broader strategic functions, such as promoting the use of a single set of eligibility criteria for NHS continuing care services across their areas.

The terms 'care home' is used in this factsheet to mean any home that is registered under the *Care Standards Act 2002*. It includes local authority homes and independent homes, some of which provide nursing care as well as personal care.

The term 'couple' in this factsheet currently refers to married couples or unmarried heterosexual couples. Where provisions apply to married couples only this is pointed out. The *Civil Partnership Act 2004* enables same sex couples to obtain legal recognition of their relationship by forming a civil partnership. Same sex couples who do not form a civil partnership are treated in the same way as unmarried heterosexual couples.

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 and personal care in a care home from their income and capital. There are some sources of assistance that are not means tested however, and that can in some circumstances, meet the full cost of a care home.

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

Each NHS Trust has to publish criteria based on national guidance¹, for providing a range of services (such as rehabilitation or specialist equipment) for people with continuing physical or mental health care needs.

¹ NHS Responsibilities for meeting continuing NHS health care needs: Guidance 2004 NAFWC 41/2004 WHC (2004) 54 and Continuing NHS Health Care Framework for implementation in Wales 2004.

These services are referred to as 'continuing NHS health care' services and should include provision for the NHS to meet the full cost of a person's ongoing care in some circumstances which can include provision for arranging a place in a private home for which the NHS then meets the full cost. The Trust will use its criteria to decide whether people are eligible for this or any other continuing health care services from the NHS which are 'free at the point of use'. Further information about continuing care services, including fully funded care in a care home, can be found in Age Concern's Factsheet 20, *Continuing NHS health care, NHS funded registered nursing care and intermediate care*.

If continuing NHS health care is arranged for you in a care home and paid for in full by your Trust, you will not have to contribute towards the cost of your care from your income or capital but you will normally be treated as if you are a hospital in-patient for benefits purposes.

A report published by the NHS Ombudsman in February 2003 confirmed that in some areas eligibility criteria for fully funded NHS care in a care home may have been unlawfully restrictive, with the consequence that residents who should have been fully funded have had to pay towards the cost of their care. As a result local NHS bodies should have taken steps to identify patients who may have suffered losses because of this and taken steps to reimburse them for any unnecessary expenditure incurred. A subsequent Ombudsman's decision has suggested that local criteria may have failed to take account of individuals with psychological needs arising from mental health conditions and also individuals being cared for in settings other than nursing homes. Further information can be found in Factsheet 20, as above.

The NHS is responsible for meeting the cost of care provided by registered nurses to all residents in homes which provide nursing care, whether self funding or local authority assisted. If you are not eligible for fully funded NHS continuing care, a NHS nurse should assess you to establish the level of NHS Funded Nursing Care before you enter a home providing such care.

Nursing care is the care given by a registered nurse in providing, planning and supervising your care in a nursing home. It does not include any time spent by any other staff who may be involved in your care. The NHS Funded Nursing Care will be reviewed after 3 months and from then at least yearly.

There is a single band for nursing costs (unlike 3 bands in England) which is currently costed at £107.60 rising to £111.00 per week from 1st April 2006².

Responsibility for meeting the cost of your nursing care lies with the local health board covering the area where you are registered with a GP. If you move to a home in a different health board area you will become the responsibility of that local health board when you register with a GP there.

If you can meet the remainder of the fees yourself without local authority assistance you should be able to receive Attendance Allowance (see Section 13). Regulations which came into effect in September 2003 require care home contracts to give a breakdown of how the cost of care is calculated and who is responsible for meeting those costs.

The NHS is also responsible for providing continence services to residents in homes providing nursing care and for meeting the cost of any continence supplies (such as continence pads) that those residents are assessed as requiring, including any equipment needed.

Community health services such as continence supplies and district nursing should be provided to residents of care homes which do *not* provide nursing care using the same criteria for people living in their own homes.

Copies of the NHS Funded Nursing Care in Nursing Homes – what it means for your area available free from Community Primary Care, Health Service Policy Directorate, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ, tel: 029 2082 5111.

Please note that if you are in a home which does not provide nursing care then you will receive any nursing care or continence service you need in the same way as you would in your own home, and it is free.

Intermediate care: If your place in a care home has been arranged as part of a package of 'intermediate care', where you are having short term therapy or treatment, either following a period in hospital, or to avoid you having to go into hospital, it will be free. Such care is time limited, and not normally longer than six weeks³.

² NAFWC 25/2004 (The rate is not confirmed in the guidance, but by letter to the authorities).

³ Guidance on the provision of intermediate care NAFWC 43/2002.

Age Concern Factsheet 20, *Continuing NHS health care, NHS funded registered nursing care and intermediate care* has more details about the above provisions.

Free 'after care' services: If you have previously been detained in hospital under certain sections of the *Mental Health Act 1983*, your residential care may be provided as aftercare under Section 117 of this Act⁴. Local authorities have no power to charge for aftercare services provided under Section 117 and this has been confirmed by the House of Lords⁵. The Local Government Ombudsman published a special report in June 2003 (followed up in its 2003-2004 annual report) which recommended that local authorities which have previously charged for such services should take steps to reimburse them or their estates. Further information can be obtained by contacting the ombudsman. The various ombudsmen in Wales were combined into one force on April 1 2006 under the *Public Services Ombudsman (Wales) Act 2005*. Contact details are: The Public Services Ombudsman for Wales, 1 Ffordd yr Hen Gae, Pencoed, Cardiff CF35 5LJ, tel: 01656 641 150, website: www.lgo.org.uk.

Help for War Pensioners: The Veterans Agency, formerly the War Pensions Agency, can pay towards the cost of a care home providing nursing care 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 War Pensions Welfare Officer. The rest of this factsheet only considers the way the local authority will apply its means-test if: your place in a home is *not* being paid for in full by the NHS; you have no funding from the Veterans Agency; and your placement has not been made under Section 117 of the *Mental Health Act 1983*.

3. How to obtain help from the local authority

Whether your stay in a home is temporary or permanent, the local authority must carry out an assessment of your needs to establish that you require care in a care home before it can assist you with the cost. If you have already been assessed as needing a place in a care home, you may wish to move on to the next section which explains how your contribution towards the cost of care will be calculated.

⁴ Section 117 places a duty on health and social services authorities to provide aftercare services for patients who have been detained in hospital under sections 3, 37, 47 or 48 of the *Mental Health Act 1983*.

⁵ *R v Manchester CC ex parte Stennett* (2002) UKHL 34

The local authority social services department has a duty to carry out an assessment of your needs if it appears that you may be in need of community care services which the authority may provide or arrange by entering into a contract with another provider.

You also have a right to an assessment if you are disabled⁶. Each local authority has its own eligibility criteria for different types of services. Once your needs have been assessed, the local authority will make a decision about whether to offer you **community care services**, which can include a placement in a care home, using those eligibility criteria. You should be given a written copy of your care assessment. If you are assessed as needing to live in a care home providing nursing care a NHS nurse will be involved in assessing how much the NHS should contribute towards the cost of registered nursing care (see Section 2).

When the local authority arranges or provides a place in a home for you, it must carry out a means-test of your income and capital to calculate how much you should pay towards the cost (unless the accommodation is provided as part of your after-care services under Section 117 of the *Mental Health Act 1983* – see Section 2). The local authority is obliged by law to do this⁷.

The rules governing financial eligibility for assistance with care home costs are set nationally by the Government⁸. Currently residents with over £21,500 are expected to meet the full cost of their care home⁹.

Guidance has stated that even 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. It goes on to say that even though you may have over £21,500 local authorities 'must satisfy themselves that the individual is able to make their own arrangements, or has others willing and able to make arrangements for them'.

⁶ Set out in section 47 of the *NHS and Community Care Act 1990*

⁷ Under section 21 of the *National Assistance Act 1948*

⁸ Copies of CRAG (Charging for Residential Accommodation Guidance) are available from Older People and Long Term Care Policy Directorate, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ. The latest full version is dated April 2005 and is subject to amendment 21 by NAFWC 36/2005. CRAG is also available at the Assembly website at: www.wales.gov.uk under Health/Social Policy/List of publications/Guidance

⁹ NAFWC 13/2005 (Capital limits increase to £21,500 from 1 April 2006)

If the care that you have been assessed as needing is not otherwise available to you then, having assessed you as needing it, the local authority has a duty to make suitable arrangements for you. Local authorities must ignore capital below the current upper limit in deciding whether care and attention is 'otherwise available' to an individual.

If the local authority is going to make the arrangements, because you need help with the fees or you are unable to make your own arrangements, then there should be no 'undue delay' in it 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. Some financial help may also come from social security benefits. Eligibility for Pension Credit is solely dependent on how much income or capital you have and does not take account of your care needs.

4. The means-test

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 home permanently, and it may apply if you are a temporary resident – but if you are a temporary resident (for example for a short-term break) you should also see Section 6.

The '**standard rate**' is the amount it costs the local authority to provide a place in a home. Each local authority will set limits as to how much it is usually prepared to agree to pay for a particular type of care, often referred to as the authority's 'usual cost'. These limits may vary between different local authority areas, and may vary for individuals in the same area as the cost of arranging care in different areas and of meeting different levels of care may vary. If the home which you wish to enter costs more than the local authority's cost, a third party may have to agree to meet the shortfall. See Section 9 for further information.

When a local authority gives a figure for its usual cost, this usually represents the amount for which the local authority will enter into a contract with a care home to pay for care. This figure includes the amount that you will be assessed to contribute; the authority will pay the balance between your contribution and the contract price.

Anyone who has capital of their own above £21,500 will be assessed as being able to pay the 'standard rate'. If you live in a care home providing nursing care the NHS will be responsible for meeting the cost of care provided by a registered nurse.

Those whose capital is between £16,000 and £21,500 will be expected to make some contribution from their capital as well as income. You should not have to make any contribution from your capital below £16,000, but you will be expected to contribute from your income.

Local authorities cannot assess the joint resources of couples – they can only look at your own income and capital. This will include income and savings that are in your sole name and your share of any jointly held savings. In calculating the amount to be contributed the local authority has to allow the resident to retain a Personal Expenses Allowance (PEA) of £20.00 per week¹⁰. You should not be asked to put your PEA towards meeting the basic cost of your care (see Section 10 for further details).

There are some important differences in the way the means-test is applied if you are a temporary, rather than a permanent, resident and also some differences between how single people and those who are part of a couple are treated. See Section 7 for the definition of a couple and more information about how couples are affected by the charging rules.

5. Permanent residents

5.1 Your capital

Most forms of capital and savings will be included in the means-test including bank or building society accounts, national savings accounts, premium bonds, stocks and shares and property (building or land). See Section 5.2 to see whether the value of your home will be taken into account.

More than £21,500 in capital: You will be expected to pay the full fee until your capital is reduced to £21,500. 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.

¹⁰ NAFWC 13/2005 (PEA increases to £20 from 1 April 2006)

Capital between £16,000 and £21,500: Both income and capital are taken into account in the local authority means-test. Capital of between £16,000 and £21,500 will be assessed to show an assumed (or **“tariff”**) income. For every £250 or part of £250 of capital between £16,000 and £21,500 you will be assessed as though you have an extra £1 per week income. For example, if you have capital of £17,000 you will be treated as having an extra £5 per week income. If your assessed income includes tariff income make sure that your contribution is reviewed each time your capital drops into the next £250 ‘band’.

Capital below £16,000: No tariff income is assumed from capital below £16,000 for local authority charging purposes. Tariff income is calculated by the local social security office on savings over £10,000 for Pension Credit purposes but at a rate of £1 per week for every £500 or part of £500.

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 or annuities, the value of funds held in trust or administered by a court, which derive from a payment for personal injury, including compensation for vaccine damage and criminal injuries, certain types of bonds, and personal possessions (as long as they were not bought with the intention of avoiding the charge). Capital held in a discretionary trust is not treated as your capital so have the same effect as being disregarded. The rules about trusts are complicated so seek advice. The £10,000 compensation payment made to Far Eastern prisoners of war on or after 1 February 2001 is disregarded. Age related payments made by the DWP to pensioners aged over 70 are also disregarded.

Jointly held capital: Only capital in *your* name should be included in the means-test if you are the person needing care in a care home. If you jointly hold capital with another person or people, it is usually divided equally between the joint owners (but see Section 5.2 for the rules on jointly held property).

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 it is worth considering dividing any joint accounts so that each person holds their capital separately.

The local authority treats joint account holders as being entitled to equal shares of any funds in a joint account. Where one of the account holders has used part of their share of the account to meet care fees, dividing the remainder equally will not accurately reflect the parties' true interests in it.

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 about deliberate deprivation).

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 realize 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 £21,500 then no precise valuation is needed because you are then expected to pay the full fee yourself. See also Section 5.2 about property.

5.2 Treatment of the value of your home

This section briefly describes 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 are some circumstances when the value of your former home must be ignored for the purposes of the means-test 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 local social security office must ignore the value of your former home where it is occupied by one or more of the following:

- your spouse or partner (someone of the opposite sex who you live with as if you were married);

- a relative¹¹ who is aged 60 or over;
- a relative who is aged under 60 but is incapacitated¹²;
- a child under the age of 16 whom the resident (the person entering a home) is liable to maintain. (This applies to local authorities only);
- a lone parent who is estranged/divorced from the resident (local authority only).

The local authority (but not the Pension Service) also has a discretionary power to ignore the value of any premises where the local authority considers it reasonable to do so, for instance if it is lived in by someone who does not fit into the above categories – perhaps a younger relative who is not incapacitated but has been helping to look after you; or a same sex partner; or a friend who lives with you who is 60 or over. The *Civil Partnership Act 2004*, will affect the rules in respect of same-sex partners.

The local authority must disregard your property for 12 weeks from the start of permanent admission to a care home. This does not affect the property disregards described above, and the disregards which apply to temporary residents described in Section 6. If the property is sold within this 12 week period then the disregard ceases to have effect from the date of sale, and so the proceeds will be counted as capital. Contact Age Concern on 0800 00 99 66 (free call) if you have a problem in obtaining the disregard in these or similar circumstances.

Sole owners living alone: If you own your own home and no-one else lives there with you, then its value will be included in the means-test as capital unless one of the disregards mentioned above applies.

Joint owners: If you jointly own property with someone else the value of your interest in the property will be taken into account unless one of the disregards mentioned above applies.

¹¹ A relative is: parent; parent-in-law; son; son-in-law; daughter; daughter-in-law; step-parent; step-son; step-daughter; brother; sister (and spouse or partner of any of the above); grandparent; grandchild; uncle; aunt; nephew; niece.

¹² '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 capacity would be similar to someone who does receive such a benefit. Medical or other evidence may be useful in proving this.

The value of your interest may in some circumstances be lower than the share of the proceeds that you would receive were the whole property to be sold. For more details on the treatment of jointly owned property, see Factsheet 38 referred to above.

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, 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 applied only for the purposes of reaching a valuation for the property prior to the sale, not once the property is sold¹³. Note that special rules apply for the valuation of interests in jointly owned property, as mentioned above.

‘Deferred payment agreements’ where capital is tied up in property: If you do not have enough readily available funds to pay the fees, but own a property which is not being disregarded, funding may be available through a ‘deferred payment agreement’¹⁴. The local authority may agree to enter into a deferred payment agreement if you do not wish to sell your home for whatever reason, or if you are unable to sell it quickly enough to pay for your fees. The deferred payment agreement would commence after the mandatory 12 week disregard had been completed.

The deferred payment agreement is for the difference between what you would be assessed to pay if your home was taken into account, and the amount you are assessed to pay from your income and other capital. If you wish to take up a ‘deferred payment agreement’ the local authority will place a ‘legal charge’ on your property.

¹³ See footnote 8 – page 7

¹⁴ NAFWC 21/2003

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 it once the property is sold. You might be asked to cover the costs of land registry searches and other such legal expenses. The agreement will be in writing and will last from the time you enter into the agreement until 56 days after you die, or the date on which you want to terminate the agreement.

No interest can be charged while the agreement lasts. 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. 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.

Legal charges for debt: If you are assessed as able to meet the full cost of care because of a property but are unwilling to pay the assessed charge now or in the future the local authority is still able to place a legal charge on your property to secure any debt that accrues to it. It can do so without your consent¹⁵. 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. Where you are willing to pay at some future point a deferred payment agreement should be used instead. Seek legal advice if the local authority states that it wishes to create a charge which is not under the deferred payment agreement. (Age Concern England is unable to give legal or financial advice). See Factsheet 38, *Treatment of the former home as capital for people in care homes*, for further details.

Renting out your property: Some people in this situation might choose to rent out their property, and use the net 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 England is unable to give legal or financial advice*). In some cases, renting out might generate enough income to pay the fees in full. If so, then you would count as a self-funding resident, and might be able to claim Attendance Allowance (see Section 13).

¹⁵ Under section 22 of the Health and Social Services and Social Security Adjudications Act (HASSASSA) 1983.

If renting the property out does not cover the fees it might be necessary to enter into a deferred payment agreement with the local authority, which will take any rental income into account when assessing how much you should contribute in the meantime¹⁶.

Once your property has been sold, the local authority may decide that you are now able to make your own arrangements and so end its contract with the home. You must be informed in writing by the local authority that it is ending its involvement. You will need to make your own contract with the home. You may wish to seek independent financial advice about how best to invest the proceeds from the sale of your property. *Age Concern is not able to provide financial or legal advice.*

5.3 Your income

If you are the person assessed as needing care in a care 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 bases 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); **or**
- partly disregarded; **or**
- included.

Income which is disregarded: Some types of income are disregarded in the means-test calculation. The most common disregards include:

- Disability Living Allowance mobility component;
- War Widow's Special Payments – the special payment of £64.62 introduced in April 1990 for 'pre 1973 war widows' (in addition to the £10 partial disregard for war widows described below);
- Christmas bonus;

¹⁶ Also under section 22 of HASSASSA 1983.

- 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 Section 5.1 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. Councils should also disregard the payments made by residents to councils towards housing support costs;
- any payments of Child Tax Credit or Guardian's Allowance.

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

- £10 per week of a War Widow's, War Widower's or War Disablement pension;
- £20 per week of certain charitable and 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 must 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 this amount is paid to his or her spouse – and the spouse does not live in the same residential or nursing home. See also Section 7.2;
- qualifying income for Pension Credit savings credit equivalent to the amount of savings credit received 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 per week is applied. See below for further details about Pension Credit.

Income which is included: Income such as your state retirement pension, Pension Credit other than any amount specifically disregarded, tariff income from capital (see Section 5.1), and private pensions will be included in full. See also above and Section 7.2 if you are 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 for permission to request information from your local social security office. Social security benefits include the state retirement pension, Attendance Allowance and Pension Credit.

Pension Credit: Pension Credit was introduced in October 2003, replacing Income Support for people over the age of 60. The benefit has two parts, both of which are means-tested. The **guarantee credit** replaced 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 49, *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 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 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 totaling 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 for savings credit can be found in Factsheet 48.

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 £16.44 per week for a single person (£21.51 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 £150.55 per week, or a couple with qualifying income of £221 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 (£174.05 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 £114.05 per week (£174.05 for a couple), who either receive savings credit or are ineligible because their qualifying income is too high, a flat rate disregard of £4.85 per week (£7.20 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 component): People who pay the full cost of their fees, including those in local authority homes, are able to claim or continue receiving AA/DLA(care). The NHS payments for registered nursing care in care homes should not affect your entitlement to AA/DLA(care) as these benefits are paid in respect of personal care needs.

If you already received AA/DLA(care) and move permanently into a home arranged by the local authority, it will be included as part of your income. However, payment of AA/DLA(care) will normally stop after 4 weeks (sooner if it is linked with a stay in hospital or an earlier period of state-funded care) if you are receiving financial help from the local authority.

AA/DLA(care) will also stop after 4 weeks of funding under the 12 week property disregard. If, at the end of the 12 weeks, you continue to receive local authority funding but on an interim (ie, loan) basis, your AA/DLA(care) should be reinstated.

AA/DLA(care) can be paid while you are receiving interim or temporary funding from the local authority (eg, while you are selling your property) provided that any assistance received from the local authority will later be repaid in full.

Previously it was only possible to claim Income Support *or* AA/DLA but not both whilst receiving interim funding. The rules have now changed and now it is possible to claim both AA/DLA and Pension Credit whilst receiving interim funding.

If AA/DLA is being paid then the 'appropriate amount' for guarantee credit should be calculated to include the additional amount for severe disability, currently £46.75 per week, which may reduce the amount which ultimately has to be repaid to the local authority. If you enter into a 'deferred payment agreement' (see Section 5.2).

AA/DLA(care) should be paid as long as you will be refunding the local authority in full but eligibility for Pension Credit may be affected by the value of the property being taken into account.

If your AA/DLA(care) has been stopped because you are getting local authority funding and you subsequently return home – or move elsewhere such as sheltered housing – you can ask for payments of AA/DLA(care) to begin again. It can also begin again if the local authority no longer needs to give financial help for the cost of the fees, for example if you inherit capital.

Note that AA/DLA(care) might be repayable if you are temporarily away from a care home. You should always inform the social security office responsible if you want your AA/DLA(care) paid again.

Age Concern has produced an Information Sheet IS/13, Care Home Funding and Attendance Allowance, which explains the rules in more detail and a free copy can be obtained by calling 0800 00 99 66 (free call). Further information about AAVDLA(care) is available in Age Concern Factsheet 34, *Attendance Allowance and Disability Living Allowance*. See also Section 13.

Third party contributions: If you decide to live in a home costing more than the local authority would normally provide for someone with your assessed needs (see Section 9 on choosing a home), someone else may have to pay the difference between the local authority's usual cost and the home's fees. Such payments are called 'third party' 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 per week 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 payments have been deducted from the cost of the home.

'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 by someone else (perhaps a relative or charity) to the local authority or the home as a 'third party contribution'; 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 means-test 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, making sure that you are left with a weekly Personal Expenses Allowance (PEA) of £20.00. The local authority should tell you – normally in writing – how it has calculated the amount you should pay. 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 home costs £300 per week, which is within the local authority's usual limit. You are 83 and single, and live in a rented flat. You have capital of £5,000 and your weekly income is the basic state retirement pension of £84.50 (including the 80+ age addition of 25 pence), 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 by the local authority because it is less than £16,000 (£10,000 for Pension Credit once you are permanently living in a care home).

The local authority calculation	£
Total weekly income (84.25 plus £29.55)	114.05
less personal expenses allowance (PEA)	<u>20.00</u>
Your weekly contribution	94.05
Cost of the home	300.00
Less your contribution	<u>94.05</u>
Local authority's contribution	<u>205.95</u>

Example 2

The local authority agrees to arrange a permanent place for you to enter a care home which costs £350 per week, the local authority's usual rate. 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 £10,400 and a joint savings 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 of your pension will be ignored by the local authority if you are paying this half to your wife.

What is included: Your savings of £10,400 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 £13,400, so you will have a tariff income of £4 per week. 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 (£150.55)).

However as your assessed income is in excess of £150.55 per week the local authority must disregard £5.05 per week of that income (in addition to allowing you to retain a PEA of £20.00).

The local authority calculation – Your weekly income	£
State retirement pension	84.50
50% private pension	70.00
tariff income from capital	4.00
	158.50
less personal expenses allowance (PEA)	20.00
less disregard of qualifying income for Pension Credit	<u>5.05</u>
Your weekly contribution	133.45
Cost of the home	350.00
Less your contribution	<u>133.45</u>
Local authority's contribution	<u>216.15</u>

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 a short-term break whilst they are waiting to move to somewhere more suitable, such as sheltered housing; or whilst they are recuperating from an illness. If your temporary care is part of an 'intermediate care' package it should be free. See Section 2.

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) should show whether your stay is being regarded as 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.

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 means-test to you straightaway, or for the first eight weeks it can ask you to pay an amount which is 'reasonable' for you to contribute. After eight weeks, it *must* apply the means-test to you, bearing in mind the differences for temporary residents outlined below.

You may receive regular short-term breaks in a home – for example, you might have care in a home for one week every six weeks. If your local authority has chosen not to apply the means-test, but to charge you a 'reasonable' amount, then this will be the cost to you each time. The eight week limit, when the local authority must apply the means-test, does not link together separate periods of short-term care – so you will not be means-tested as set out in this factsheet after you have had your eighth separate week of care if your local authority's policy is to charge you a 'reasonable' amount.

When the local authority does carry out the means-test either straightaway or after eight continuous weeks of temporary care, the same upper and lower capital limits, £21,500 and £16,000, apply as for permanent residents. There are, however some differences in the rules for temporary residents and the authority must:

- ignore the value of your home 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;
- ignore some of your income so you can continue to pay bills as home – for instance, water rates; insurance premiums, standard charges for fuel;
- ignore any help with housing costs from Pension Credit which you usually get whilst living in your own house;
- ignore any Housing Benefit which you usually receive whilst living in your home;
- ignore any Attendance Allowance or Disability Living Allowance care component (AA/DLA(care)) which you receive (DLA mobility is ignored in all cases).

Your other capital and income will be included in the means-test as outlined in Section 5.

If the amounts which the local authority ignores from your income so that you can continue to pay your bills at home are not enough, you could make a complaint to the authority to this effect, using the local authority's complaints procedure. See Section 12.

Although any AA/DLA 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 four 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) may be affected. You need to tell the office handling your claim 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 rate for a couple rather than the rate for two single people.

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 means-test 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 means-test as a permanent resident should apply from the date it is decided your stay is to become permanent.

The value of any property you own should be disregarded for 12 weeks from the date your stay is confirmed as permanent (see Section 5.2). This will be in addition to any period for which it was ignored because you were a 'temporary' resident.

Similarly, a stay which was initially assessed as permanent may turn out to be temporary – 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 for example. If so, the Welsh Assembly's guidance¹⁷ is that it would be unreasonable to continue to apply to that resident any rules which would have affected him/her as a permanent resident – such as taking the value of property into account, and in particular the placing of a legal charge on the property.

6.2 'Trial' periods

You might be a temporary resident because you have entered a home on a 'trial' basis: that is, to see whether you would like to stay in that home permanently. If you receive Housing Benefit or Pension Credit housing costs or Council Tax Benefit for your own home, you should note that these can only be paid for 13 weeks if you are having a 'trial' period in a care home.

7. Couples

This Section deals with specific issues which may affect couples. The term 'couple' currently refers to married couples or unmarried heterosexual couples. Where provisions apply to married couples only, this is pointed out. The *Civil Partnership Act 2004*, enables same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. Same sex couples who do not form a civil partnership will be treated in the same way as unmarried heterosexual couples.

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 means-test system might be applied in your case were you to need state financial support in the future.

¹⁷ See footnote 8 page 7

The means-test is applied by local authorities to couples in the same way as for single people, or where only one of a couple moves to live in a home.

This means, that, in order for you both to obtain financial support from the local authority, you must **both** be assessed as needing care provided in the type of home you have entered. Once this has been agreed, the local authority **must**¹⁸ look separately at the income and savings which you each have in your name, and calculate how much each of you should contribute from your separate resources.

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 £21,500 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 home. 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 home, you should check to see whether you might now be eligible for Income Support, Housing Benefit (for help towards your rent) or Council Tax Benefit (or discount if you now live alone). Age Concern Factsheet 18, *A brief guide to money benefits*, may be helpful.

¹⁸ Under the National Assistance Act 1948, the local authority has not powers jointly to assess the resources of couples

If you are **married** 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 (but included by the local social security office for Pension Credit purposes) when calculating how much your spouse should pay towards the costs of their care in a home.

By private pension we mean an occupational pension, a personal pension or a payment from a retirement annuity contract. If you do receive half your spouse's private pension, this may affect any other benefits to which you might be entitled – such as Pension Credit – because this amount will now count as part of your income. However, this disregard by the local authority does not apply to **unmarried** partners – even when there is a private pension paid to the person in a care home. So if you are not married to your partner, there may be difficulties if the person 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 £20.00 per week which it 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. Because this power is discretionary, the local authority may – but does not have to – do this. There is no such discretion in the rules for social security benefits.

This means that 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.

8. Liability of your spouse

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 residential or nursing home), a man is liable to maintain his wife, and a woman is liable to maintain her husband. This is described as being a 'liable relative', and applies only to married couples – unmarried couples are not legally liable to maintain each other under this Act, even when they live together as husband and wife. 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. However, whilst the local authority may ask your spouse for details of their income and savings it does not have the power to insist that your spouse gives them this information.

CRAG regulations 11.005 – 11.006A state that local authorities should not use joint assessment forms requiring information about your spouse's income and capital as well as your own. Authorities are also reminded that they should be sensitive to the feeling of both residents and spouses at what is a stressful and upsetting time. A spouse can be asked to make a 'liable relative' payment for both temporary and permanent stays.

The local authority cannot impose a payment upon a spouse without the spouse's agreement. Only a court can decide upon the appropriate amount if the parties are unable to reach a mutually acceptable figure through negotiation. There are no known precedents for such a dispute being taken to court. The provision of care should not be delayed on account of outstanding negotiations over a liable relative payment.

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.

8. Deprivation of assets

If you give away assets or otherwise dispose of them in order to put yourself into a more favourable position to get local authority assistance with your care home fees, the local authority may be able to assess you as if you still have the assets. CRAG regulations 6.062 – 6.064 state that the timing and motive behind the transfer should be taken into account. The local social security office can also consider whether assets were disposed of deliberately in order to qualify for means tested benefits such as Pension Credit.

Further information about intentional deprivation and the impact which this could have on you, or 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: third party contributions

When the local authority makes arrangements for you to enter a home, you have the right to choose the home which 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 currently anywhere in England and Wales¹⁹, and in Scotland by special arrangement.

The *Health and Social Care Act 2001* also allows regulations to be made to extend this choice to Northern Ireland, the Isle of Man and the Channel Islands.

If you choose a home (your 'preferred accommodation') which is different from the home which the local authority suggests, then the local authority must 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 to the local authority is not more than it would normally expect to pay for someone of 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.

Third-party contribution: If your 'preferred accommodation' would cost more than the local authority would normally pay for someone with your assessed needs, it must still make the arrangements for you in that home as long as someone else (and in some cases yourself – see below) can make up the difference between that figure and the home's fee by making a third party contribution.

¹⁹ Assembly guidance about choosing a home and third party payments is found in Guidance on National Assistance Act (Choice of Accommodation) Directions 1993 NAFWC46/2004

This does not mean that local authorities can set arbitrary ceilings on the amount which they will pay. The authority must be able to demonstrate that care suitable to meet your assessed needs can be arranged at its usual cost. It should only seek top-up payment from a third party where you have chosen to enter a home costing more than its usual amount. If you have entered a more expensive home out of necessity, the local authority should agree to meet the extra cost. A more expensive home might be necessary, for example, if you have particular needs which can not be met in the accommodation offered (for example, religious or dietary needs, or the need to be near relatives such as your spouse), or if market pressures mean that there are no homes in the area accepting residents at the local authority's usual rate.

Age Concern Information Sheet IS/25, *Choice of Accommodation – Care Homes*, explains in more detail the rules about preferred accommodation and when the local authorities can ask for top up payments. Age Concern Factsheet 29, *Finding care home accommodation*, offers further advice on finding accommodation suitable to meet your needs.

Where a third party does agree to make a payment, the local authority is obliged to make a contract with your preferred home subject to the conditions outlined above. However, the third party 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 third party 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 third party payments cannot be continued for some reason, you may have to move to another home but the local authority should carry out an assessment of the risks involved before taking this course of action.

Residents' contributions to more expensive accommodation

The Welsh Assembly Government has said in guidance²⁰ to local authorities that it is not possible for residents to act as their own third parties by using the personal expenses allowance to top up the basic cost of accommodation covered by the local authority's contract with the home.

²⁰ NAFWC 46/ 2004, NAFWC Letter 07/ 2003

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 below. This was confirmed by a court case, *R v E Sussex County Council ex parte Ward*.

Residents whose property is subject to the 12 week disregard, or who have entered into a 'deferred payment agreement', are allowed to make up the cost of more expensive accommodation themselves, from any disregarded capital or income.

An exception is made to the usual rule for people in those specific circumstances as they are considered to have enough resources themselves to pay for more expensive accommodation once the value of their home is realised²¹.

Further information about deferred payments can be found in Age Concern Factsheet 38, *Treatment of the former home as capital for people in care homes*.

10. 'Extras' in a 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, and in the case of nursing homes how much the NHS is prepared to pay for your nursing care. 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 (PEA) of £20.00 to cover costs such as these. It is the Department of Health's view that there is a difference between a resident paying for more expensive accommodation and paying for 'extras' which do not form part of the care package. The PEA should not be spent on aspects of board, lodgings and care that have been contracted for by the council. This does not preclude residents buying extra services from the care home, where these are genuinely additional to those services that have been contracted for by the council and/or have been assessed as necessary by the council or NHS²².

²¹ NAFWC 46/ 2004

²² NSFW Letter 07/ 2003, CRAG 5.001

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 and advice such as incontinence advice or stoma care, as well as providing (where necessary) incontinence supplies and nursing aids, physiotherapy, speech and language therapy and chiropody.

Where such services are provided by the NHS, they are free of charge. The NHS will cover the cost of any equipment for your use in addition to the standard equipment that the home provides as part of its services (such as specialist feeding equipment). See Section 2 for further details of NHS responsibilities towards residents in care homes which provide nursing care.

Each NHS Trust should have its own criteria for the type of help it will provide, based on guidance issued by the Government. These criteria should be published.

The Welsh Assembly Government has published National Minimum Standards for Care Homes for Older People revised March 2004. Local authorities must observe Assembly guidance 'Creating a unified and fair system for assessing and managing care'. If you have difficulties in obtaining information about the Trust's criteria, or feel these have not been correctly applied to you, you can complain. See also Section 2 and Age Concern Factsheet 20, *Continuing NHS health care, NHS funded registered nursing care and intermediate care*, for details of how to challenge a decision.

If your care has been arranged by the local authority or the NHS you will not have a formal contract with the home. However, you should be given a statement of terms and conditions which shows exactly what care the local authority or NHS intends should be included in the fee paid to the home and who you can complain to if you are dissatisfied. This agreement could form part of your 'care plan' which a local authority should prepare with you following the assessment of your needs.

If you have arranged your own care you should have a written contract covering areas such as the room you are entitled to occupy, fees payable, care and services covered by the fee, anything that is not included in the fee and the period of notice. See Factsheet 29, *Finding care home accommodation*.

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

When a local authority arranges a place for you in a care home, 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 to pay, 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 Work and Pensions (through the local social security office) can appoint someone else to exercise on behalf of the claimant (the person in the home) 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 is collected on the person's behalf. Appointeeship only covers social security benefits. The claimant and the prospective appointee will be interviewed before any appointment is made.

Enduring Power of Attorney and Receivership: 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 the capacity to manage their own finances.

People sometimes handle older people's financial affairs without the proper legal authority, and local authorities are advised by the Department of Health to find out whether someone has registered Enduring Power of Attorney for the person, or has been appointed as a Receiver under the Court of Protection. Age Concerns Factsheet 22, *Legal arrangements for managing your finances*, has more detailed information about these matters.

If you are handling someone's financial affairs, you have no responsibility to pay for that person's care out of your own money, unless you choose to do so. You do however have a responsibility to use the resident's money in the resident's best interests, and thus use it to pay the resident's assessed fee.

Advocacy for older people: Someone you know may need to enter a care home, but may have difficulty expressing their views or making decisions for themselves. It is important to try to represent the 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 external to the resident becomes involved. Advocacy schemes may be run by the local authority, or by local organizations such as local Age Concerns. However, they are not available everywhere.

Your local authority should be able to tell you whether or not there is such a scheme in your area, if you think this would be helpful. In this context an 'advocate' is not a legal representative: instead they 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 interest actually means. However, the Government's guidance to local authorities does not specify what procedures they should take when assessing people who do not have someone to act for them.

12. Sorting out problems: the local authority complaints procedure; the Commission for Social Care Inspection

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

Concerns about standards or treatment in a home should be taken up first with the staff or manager of the home or, if more serious, with the local office of the Care Standards Inspectorate for Wales which is responsible for the inspection and registration of care homes.

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. If you want the NHS to pay for your nursing care (see Section 2) you will need an assessment to establish the level the NHS will pay. Further information is available in Age Concern Factsheet 20, *Continuing NHS health care, NHS funded registered nursing care and intermediate care*.

If you are able to pay all the fees yourself, you may be able to claim Attendance Allowance. NHS payments for registered nurse care do not affect your right to receive AA/DLA(care). If you are receiving interim funding from the local authority, in the form of a loan until your property is sold, you should still be able to receive AA/DLA(care) and may also be able to Pension Credit.

If you have savings of more than £21,500 you will be expected to pay the fees for your accommodation and personal care in full yourself until your savings drop below £21,500. If you are initially paying the fees in full yourself but in the future your savings fall to £21,500, you may need to turn to the local authority to see whether they will agree to support you financially, as described in this factsheet. The local authority must first assess your care needs and agree these meet its criteria for care in a care home before it will consider helping you financially. There can sometimes be a delay so you might want to approach your authority a few months before your capital reduces to £21,500. Individuals already in care homes as self-funders but who, because of diminishing resources, are on the verge of needing authority support, have the same rights as those being placed by the authority and their needs should be assessed using the unified Assessment process²³.

If the home which you have been self funding in costs more than the local authority is usually prepared to pay for that type of care this may cause difficulties if you have to apply for local authority assistance later on. The local authority may require a third party to make up the difference and, if none is available, suggest that you move to a cheaper home. If it is suggested that you move, ask the authority to carry out an assessment of the risk of this being detrimental to your physical or psychological well-being.

²³ NAFWC 46/ 2004

If you moved into a care home in a different local authority area from where you lived before and have since been self funding, the local authority in whose area you now live will usually be responsible for assisting you. It is generally difficult to obtain firm assurances from a local authority as to what assistance it might provide at some future point.

If you make your own arrangements to enter a private or voluntary home you may still 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. If you are eligible for AA/DLA(care), the additional amount for severe disability £46.75 per week will be included in the calculation for guarantee credit.

It will depend upon your 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 cost of a home by itself.

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*.

14. Further information

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

Carers Wales, River House, Ynysbridge, Gwaelod y Garth, Cardiff CF15 9SS, tel: 020 2081 1370, website: www.carersonline.org.uk. 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), website: www.counselandcare.org.uk. A UK wide charity which provides advice for older people, their families and professionals on community care and other issues. Includes information for callers from Wales.

Elderly Accommodation Counsel, 3rd Floor, 89 Albert Embankment, London SE1 7TP, tel: 020 7820 1343, website: www.housingcare.org. A national charity helping older people make informed choices about their housing, care and support. EAC also maintains a nationwide database of all forms of accommodation for older people – retirement housing to rent, buy or part buy, extra care housing, care homes and nursing homes. Staff also offer advice and detailed information to help callers choose and finance the accommodation most suited to their needs. Includes information for callers from Wales.

Relatives and Residents Association (The), 24 The Ivories, 6-18 Northampton Street, London N1 2HY, tel: 020 7359 8148, website: www.relres.org. Advice line 020 7359 8136. The Relatives and Residents Association gives advice and support to older people in homes, their relatives and friends. The Association is committed to improving the standards of care in a care home 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 throughout the country; contact the Relatives and Residents Association for more details. Includes information for callers from Wales.

The following fact/information sheets may be relevant:

Factsheet 18	<i>A brief guide to money benefits</i>
Factsheet 20	<i>Continuing NHS health care, NHS funded registered nursing care and intermediate care</i>
Factsheet 22	<i>Legal arrangements for managing your finances</i>
Factsheet 29	<i>Finding care home accommodation</i>
Factsheet 34	<i>Attendance Allowance and Disability Living Allowance</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>
Info Sheet IS/13	<i>Care home funding and Attendance Allowance in care homes</i>
Info Sheet IS/25	<i>Choice of Accommodation – Care Homes</i>

15. Further information from Age Concern

Age Concern England's annual publication *Your Rights* gives more information about pensions, benefits and other kinds of financial help. It costs £5.99 and is available from Age Concern Books. To order, please telephone our hotline (9am-7pm Monday to Friday, 9am-5pm Saturday and Sunday): **0870 44 22 120** (national call rate), or visit our **website: www.ageconcern.org.uk/bookshop** (secure online bookshop).

If ordering by post, please send a cheque or money order, payable to Age Concern England, for the appropriate amount plus p&p to Age Concern Books, Units 5 & 6, Industrial Estate, Brecon, Powys LD3 8LA.

(Postage and packing: mainland UK and Northern Ireland: £1.99 for the first book, 75p for each additional book up to a maximum of £7.50. Free on orders over £250. For customers ordering from outside the mainland UK & NI: credit card payments only; please telephone the hotline for international postage rates or **email: sales@ageconcernbooks.co.uk**).

If you would like:

- to find your nearest Age Concern
- any additional factsheets mentioned (a maximum of five may be ordered)
- a full list of factsheets and/or a book catalogue
- to receive this information in large print

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB30375), 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 any queries arising from this factsheet, or it does not cover the information you require, please contact Age Concern Cymru on tel: 029 2043 1555 or email: enquiries@accymru.org.uk, or write to us at Ty John Pathy, 13-14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ.

Age Concern provides factsheets free to older people, their families and people who work with them.

If you would like to make a donation to our work, you can send a cheque or postal order (made payable to: Age Concern Cymru) to the Fundraising Officer, Age Concern Cymru, Ty John Pathy, 13-14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ. 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 020 8765 7200 (national call rate) and ask for our factsheet subscription leaflet.

Find out more about Age Concern Cymru online at: www.accymru.org.uk.

Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age Concern. Whilst every effort is made to ensure accuracy, Age Concern cannot be held responsible for errors or omissions.

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. (*Age Concern Cymru does not give financial or legal advice*).

This factsheet is based on one of the same title produced by the Information Unit, Communications Division at Age Concern England and is adapted for use in Wales.

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