



advice and support for older age

**Independent
Age**

Guide

Guide 52

Care Home Fees: Paying them in Scotland

Living in a care home can be expensive. Some people are able to pay their own care home fees, but others may need financial support from their local council to meet the cost of their care.

This guide explains the system of funding for people who need to live in a care home in Scotland.

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1 Moving into a care home

Getting an assessment

If you are finding it more difficult to cope in your own home, you can ask your council's social work department to arrange for an assessment of your needs. For more information about the needs assessment, please see guide, **Assessment and Services from your Local Council in Scotland** (Guide 50).

If the needs assessment shows that the only way to meet your needs is for you to move into a care home, then this should be written down within your needs assessment and, if relevant, your 'care and support plan'. If your care is part-funded by the council, your care and support plan should say which sort of care home can meet your needs, (for example, a nursing home or residential home or a specialist dementia care home).

Finding a care home

To find out about care homes in your local area, you can contact First Stop Care Advice (0800 377 7070, housingcare.org) or the Care Inspectorate (0345 600 9527, careinspectorate.com).

It may be helpful for you, or a friend or relative, to try to visit several care homes before choosing, to see what they are like, whether they will be able to meet your care needs, and what facilities are available. You can also ask to stay in a care home for a 'trial period' to see if you would like to continue living there. It is a good idea to think about what you would like from your care home before going to visit.

For more information about choosing a care home, see our guide, **Care Homes: what to look for** (Guide 19).

2 What if I have personal and/or nursing care needs?

In Scotland, if you are over 65 and have care needs that meet the definition of 'personal care', which need to be met in a care home, your council will pay £169 a week towards your care home fees.

If your care needs also include an assessed need for care in a nursing care home, your local council will pay an additional £77 a week for your nursing care. This means the council's total contribution for the personal and nursing care element of your care home fees could be £246 a week.

You are only eligible for personal and nursing care payments if:

- you have had a needs assessment by the social work department which has shown that you require this care; and
- the council has contracted with the care home for these payments.

This means that if you are arranging your own care home placement and move in before a needs assessment has taken place, or before a contract has been agreed between the council and care home for your fees, you may be responsible for the full cost of any fees during this time. Any funding you later receive cannot be backdated.

You may be expected to contribute towards, or pay in full, the rest of the care home costs. These are known as the 'accommodation/hotel costs'. To work out your contribution towards these accommodation costs, you will need to have a financial assessment by the social work department following your needs assessment (see chapter 3).

NHS continuing healthcare

NHS continuing healthcare is a package of care funded by the NHS. This care is usually provided in hospital but can be provided elsewhere, for example, in a care home. If you receive NHS continuing healthcare funding, you will not be expected to pay for any of the fees charged by the care home. Eligibility is not based on any single diagnosis but on whether you have 'primary health care needs' as opposed to social care needs. Whether you have primary health care needs is determined by the nature, complexity, intensity and unpredictability of your care needs and whether you need regular treatment or supervision by specialist NHS staff. The NHS continuing healthcare eligibility criteria is set out in the guidance [1].

To identify whether you meet the eligibility criteria, a continuing healthcare assessment will be completed by a health professional. The assessment is then summarised by the professionals involved in the 'assessment summary' document which recommends whether or not you are eligible for NHS Continuing Healthcare funding.

3 The financial assessment

After the needs assessment, the council will carry out a 'financial assessment' to work out your contribution towards the 'accommodation/hotel' costs of your care home fees, assuming that you are eligible for free personal and/or nursing care (see chapter 2). Every council must follow the 'Charging for Residential Accommodation Guide' (CRAG) [2] when calculating how much you need to pay towards your care home fees.

The financial assessment – sometimes called the 'means test' or 'charging procedure' – applies if you move into a care home permanently and may apply if you are a temporary resident, for example, in respite care (see chapter 12 for more information about temporary residents).

If you have savings and capital of less than £16,000, you will not have to use any of this money to pay towards your care home fees. However, you will have to contribute all of your weekly income towards the accommodation costs of your fees, assuming you are eligible for free personal and/or nursing care payments, except for the Personal Expenses Allowance of £24.55 per week, which is mentioned below. You may also keep any Pension Savings Disregard you have been awarded of up to £5.75 a week (see chapter 4).

If your savings and capital are worth between £16,000 and £26,000, and assuming you are eligible for free personal and/or nursing care payments, the council will contribute toward the accommodation costs of your care home fees,

but you will have to pay a charge known as 'tariff income' (see chapter 5) of £1 for every £250 between £16,000 and £26,000 in savings. You will still have to contribute all of your income apart from your Personal Expenses Allowance (see below), and any Pension Savings Disregard.

If you have savings and capital worth over £26,000, and you have arranged your own care home place without involving the council, you will have to pay all of the care home fees until your money reduces to this limit.

The Personal Expenses Allowance

If your care home fees are part-funded by the council, most of your weekly income will go towards paying the accommodation costs of your care home fees (assuming you are eligible for free personal and/or nursing care). However, you will keep a Personal Expenses Allowance (PEA) of £24.55 a week from your assessed weekly income. You can use this PEA to cover expenses not covered by your care home contract, for example, toiletries, stationery or small presents for friends and relatives.

The council can allow you to keep more than £24.55 a week as your PEA. This could be because you have to pay ground rent or standing charges for a house that you are trying to sell, or because there are other housing-related costs for a property that you still own, for example, because you have agreed a deferred payment agreement with the council (see chapter 7).

You can also ask to have your PEA increased to help support your spouse or partner who remains at home, for instance, if they are living on a low income and have

claimed all the benefits they are entitled to, or if they need help with the cost of visiting you. This is given at the discretion of the council and there is no definition of the circumstances that prompt an increase; you will need to negotiate with your council.

Does your spouse, civil partner or partner have to pay towards your care home fees?

You should be assessed as an individual to pay your care home fees, whether you move into a care home permanently or on a short-term basis. The council does not have the right to make your spouse, civil partner or partner give details about his or her income and savings.

Spouses or civil partners (but not unmarried partners) were previously considered by councils to be able to pay some money towards the cost of your care home fees. This was called a 'liable relative' payment. However, the law changed in 2007 and local councils in Scotland can no longer seek a liable relative's payment.

(Note that if you receive Pension Guarantee Credit at the amount for a couple, you may want to claim individually if one spouse/partner moves to a care home permanently).

4 Your income

If the council contributes towards the accommodation part of your care home fees (assuming you are eligible for free personal and/or nursing care), you will have to use most of your income, such as your State Pension, Pension Credit, earnings, income from investment bonds, insurance policies, annuities etc, as a contribution towards your care home fees.

Some types of income are not taken into account in the financial assessment. For example, you are able to have 50% of your occupational pension ignored if you give it to your spouse or civil partner to support them at home. If you are not in a civil partnership or married to your partner, you will have to ask the council to increase your PEA under the discretionary rules to support your partner at home (see chapter 3).

Attendance Allowance, Disability Living Allowance and Personal Independence Payment

Attendance Allowance (AA), Disability Living Allowance (DLA) and Personal Independence Payment (PIP) are non means-tested benefits. This means your income and savings are not taken into account when deciding your eligibility. Attendance Allowance is a benefit for people aged 65 and over who need regular care or supervision, while DLA is a benefit for people under 65 who need regular care or supervision, or who have mobility problems. DLA has now been replaced by PIP for new claimants. More information is available at [gov.uk/browse/benefits](https://www.gov.uk/browse/benefits)).

If you receive financial help from the council, including the personal care payment, towards your care home fees, any entitlement to Attendance Allowance or the care component of DLA or daily living component of PIP, will normally stop after you have been in a care home for 28 days. This rule also applies to the following:

- if you are receiving NHS continuing healthcare funding in a care home
- if the council is applying the 12-week disregard to your property, as you will be 'council funded' during those 12 weeks.

If you do not receive any financial assistance from the council to pay your care home fees, you can still claim Attendance Allowance and DLA (both care and mobility components) and PIP. If you were not already claiming either of these benefits and you are going into a care home as a self-funder, contact the DWP for an application form.

Pension Credit

Pension Guarantee Credit is paid to top up the income of people on low incomes. It will be included as part of your income in the council's financial assessment for care home fees. If you receive financial help from the council towards your care home fees, any Pension Guarantee Credit you receive will go towards the accommodation part of your care home fees. The council will expect you to claim Pension Guarantee Credit if you are entitled to claim it.

If you are one of a couple and only one of you is moving into a care home permanently, you may both need to claim Pension Guarantee

Credit as separate individuals. Contact the DWP Pension Credit helpline (0800 99 1234) and ask for a review of your entitlement.

Pension Credit Savings Disregard

A 'Savings Disregard' assessment is carried out by the council when people aged 65 and over move into a care home permanently. This is similar to the Pension Savings Credit that you would have received if you were living in your own home. The Savings Disregard will be paid to you up to a maximum of £5.95 a week for a single person and £8.95 for a couple, depending on your weekly income. This is paid to you on top of your Personal Expenses Allowance of £24.55.

5 Your savings and capital

Your savings and the value of any capital that you own in your name will usually be taken into account within the financial assessment. This will include bank and building society accounts, national savings accounts, premium bonds, stocks and shares and property (buildings and land). Any savings or capital you own jointly with someone else (your spouse, civil partner, partner or friend) will be divided into equal shares between you. If you hold money in a joint account which is shared in unequal proportions, you could close the joint account, divide the savings and open your own new account with your exact portion of the savings, as long as you can show written proof of this.

You may want to consider splitting a joint account with equal shares into two equal separate accounts anyway, as this is likely to make handling your affairs much easier, ensuring that your income is distinguished as separate from your spouse's income. It will also make it easier to see the assessed contributions that are being paid towards the cost of the fees and will ensure that your spouse/partner's income is not being used for this.

Disregarded savings and capital

Some savings and capital are completely ignored by the council. Capital which is completely ignored includes the surrender value of life insurance policies, the value of money held in trusts which derive from a payment for personal injury, and personal possessions (as long as they were not bought deliberately with the intention of avoiding paying for your care).

Currently when your local council assesses your finances, they are allowed to take into account any income you receive from bonds, with or without a life assurance. However, councils must ignore the capital part of an investment bond which contains one or more life assurance policies, although the surrender value of an investment bond without life assurance is taken into account.

How your contribution is worked out

For 2014-2015 the upper capital threshold is £26,000 and the lower capital threshold is £16,000. These figures are reviewed each April.

If you have capital over £26,000, you will be responsible for paying all of the accommodation costs of your care home fees (see chapter 2), assuming you are eligible for free personal and/or nursing care, until your capital reduces to this upper savings threshold.

Capital between the upper and lower capital threshold (ie between £16,000 and £26,000), as well as the contribution from your weekly income, will mean that you will have to contribute an extra £1 a week for every £250 you have in savings between £16,000 and £26,000. This is known as 'tariff income'.

Once your capital drops below the lower capital threshold (ie below £16,000), you will not be expected to use any of this capital to pay for the accommodation costs of your care home fees. There will not be a tariff income but you will still have to contribute from your actual income each week.

6 Treatment of the value of your home

The council should follow section 7, 'Treatment of Property', in the 'Charging for Residential Accommodation Guide' (CRAG) [3] when deciding whether to include the value of the property you own as capital in the financial assessment for care home fees.

The 12-week property disregard

For the first 12 weeks, the council must ignore the value of your sole/main property if you own it, if:

- your property is taken into account in the financial assessment (see later in this chapter for information on disregards); and
 - you have less than £26,000 in savings; and
 - you are moving to a care home on a permanent basis.
- This is known as the '12 week property disregard'.

The 12-week disregard is not based on the level of your savings, but if your savings or other capital besides the property are above the upper capital amount of £26,000, you will be assessed as able to self-fund your care home placement. Please also see chapter 2 on free personal and nursing care and chapter 4 on disability benefits if you are self-funded.

This means that if you own a property but have limited savings (below £26,000), you may be eligible for help with the accommodation part of your care home fees for the first 12 weeks on top of any personal and nursing care payments you receive.

If you are already living in a care home, you may still qualify for the '12 weeks property disregard' from the council while your property is being sold (if you decide to sell it) if:

- you are paying your full fees as a self-funder without any help from the council (see chapter 11)
- but your savings have reduced to £26,000; and
- you have not sold your property.

This is because the 12-week disregard is only available when residential care accommodation is provided by the council to meet the assessed care needs of someone who also has a property.

If you are self-funding, but your local council arranged your care home placement in order to pay your personal and/or nursing care payments, you may also still be eligible for the 12-week property disregard. The Scottish Guidance is unclear on this point – please contact us at Independent Age (0800 319 6789, advice@independentage.org) if this becomes an issue so we can check this.

If your property is sold before the 12-week property disregard period ends, the disregard stops and the value of your property will then be included as capital in the financial assessment from the date of sale (minus 10% sales expenses, where there would be actual expenses involved in a sale). After 12 weeks, the value of your property will be counted as part of your capital whether you have sold it or not, and you will be considered as a 'self-funder' if the capital is over £26,000 when added to your savings.

What happens if someone else lives in your property?

Even if you own your home and the property is in your name, the value of your home will not be counted as capital if your spouse or partner lives there. This is known as a 'mandatory' disregard (CRAG section 7).

The value of your home is also ignored if a relative or family member (defined in CRAG section 74 [4]) lives there who is:

- 'incapacitated' (they receive or would qualify for a disability benefit such as Attendance Allowance, Disability Living Allowance or Personal Independence Payment)
- a child you are responsible for under the age of 16
- aged 60 or over.

If your partner, relative or family member, later moves out of your property, or your property is sold, the value of your home will no longer be disregarded and it will be included in your financial assessment as mentioned previously in chapter 3.

The council can also ignore the value of your property in other circumstances, such as, for example, if a friend gave up their own property some time ago in order to move into your home to care for you, but you now have to move into a care home. This is called a 'discretionary' disregard.

However, this decision can be reviewed by the local council at any time, usually when the circumstances relating to the disregard change.

If you own properties other than your main home, their full value will be taken into account in the financial assessment

as capital. This is because it is only your main or sole place of residence that counts for the purposes of mandatory and discretionary disregards, 12-week property disregards and deferred payments.

If you jointly own (either legal and/or beneficial interest) any properties not covered by the disregards described here, please see chapter 7 for more information.

A loan from the council while your property is being sold

If you have put your home up for sale to pay for your care home fees, but it is still not sold after the end of the 12-week property disregard ends, the council may give you an interest free loan. The loan will be to pay for the care home fee contribution you are assessed as being able to make (see previous chapters). This is sometimes referred to as 'interim funding'. The interim funding stops when you have sold your property and you will then have to pay back the loan to the council. The council may seek 'security' against the property to cover the loan, which means they may place a charging order (a legal document) to make sure the money is repaid to the council when the property sells.

What if I do not want to or cannot sell my property?

If you are going into a care home, you can request a long-term loan, known as a 'deferred payment agreement', from the council if you:

- have less than £16,000 in capital, (excluding the value of your home, ie in savings); and
- you either do not wish to sell your home

- are unable to sell your home within 12 weeks.

A deferred payment agreement means that you pay a weekly contribution towards your accommodation costs (assuming you are eligible for free personal and/or nursing care) from your income. The council will then pay the difference in fees and recover these costs at a later date when your property is sold.

Councils should tell you that you can choose to enter into a deferred payment agreement, if you are eligible. However, you may not be given a deferred payment if:

- there is an outstanding mortgage on your property. This is because it may not be possible to meet your mortgage repayments at the same time as your care home fees contribution from your income
- the size of the deferred payment the council is being asked to make could prevent other people from accessing the deferred payment scheme (depending on the council's total budget for the scheme)
- the value of your property (or share in the property) is unlikely to cover the total cost to the council of paying towards your care home fees, when the property is eventually sold.

If the council agrees to a deferred payment agreement, it will usually seek to place a 'standard security' (or charging order) on your property to make sure the money is repaid once the property is sold. You can end the deferred payment agreement at any time by selling your property and/or paying back the loan. No interest is charged on the loan until 56 days after you pass away (unless the

agreement ends before then by you selling the property, in which case interest can accrue after one day).

The council may only lend you the amount they would normally expect to pay for a care home placement. This is called the 'standard rate'. A 'top-up fee' from a third party such as a friend or relative may also be required. This will be likely if you wish to go to a more expensive care home than those that the council has offered at the standard rate that can also meet your care needs. Please see chapter 10 and guide 53 for information on when a top-up is appropriate.

If the top-up request is 'legitimate' (in other words it is reasonable for the council to ask you to pay for a more expensive care home), it is possible to pay your own top-up (up to a maximum of the lower capital limit - £16,000). This is possible while you have a deferred payment or during a 12-week property disregard.

If the top-up is reasonable, the council may decide to lend you more than they would usually expect to pay themselves. They can do this by adding the extra top-up to the rest of the deferred payment agreement if they think you can afford to repay it.

If the council refuses to give you a deferred payment agreement, they should state the reason for refusal in writing. You may want to seek further advice if this happens.

What happens if your property is rented out?

If you choose not to sell your property and rent it out to tenants, any rental income will be counted as income in the financial assessment and the value of the property will be counted as capital in the financial assessment (unless it is ignored under one of the mandatory or discretionary property disregards mentioned earlier). If your total capital (including the value of the property) is over £26,000, you will be responsible for the full cost of your care home fees. In other words, you will be a 'self-funder'. You may still be eligible for free personal or nursing care to help with this.

You may want to ensure that if you decide to rent the property, your total income (including rental income) will cover any care home fees you are responsible for paying. If your income does not cover the cost of the contribution you have been assessed as paying towards your care home fees, you could request a deferred payment agreement from the council (if you have savings below £16,000) to try and cover the 'funding gap'. Although it is unclear if the council will provide a deferred payment in such circumstances, and may have discretion to offer this.

If you choose to let out your property rather than sell it, the value of your property will be taken into account in your assessment for Pension Guarantee Credit and may mean you are no longer eligible for the benefit (because the tariff income element of Pension Guarantee Credit assumes a £1 for every £500 you have in capital above £10,000). Also, any rental income you receive will be included as part of your annual income and you may be liable to pay income

tax on it. Contact HM Revenue and Customs ([hmrc.gov.uk](https://www.hmrc.gov.uk)) for further advice on this.

7 Jointly owned property

If you jointly own property with someone who either does not live in the property, or who does live there but they do not come under the disregarded groups mentioned in chapter 6, then your share of the property may have a value, depending on the circumstances. The charging guidance (CRAG) [5] uses the terms 'legal' and 'beneficial' owner, although you may not recognise these terms since they are not common in Scottish law.

Legal and beneficial ownership – what is the difference?

You can own property as a legal owner, which means to hold property in your name.

However, in order to be entitled to any capital from the sale of a property, you must also be a beneficial owner, which means that you are entitled to a share of the sale proceeds.

If you are the only legal owner and the only beneficial owner, then you will be entitled to all of the capital from the property sale. The council will take the full value of the property into account in your financial assessment (minus any selling costs up to 10% of the value of the property and any outstanding mortgage).

Are you a legal owner or a beneficial owner?

If you legally (either individually or jointly) hold property in your name, have not contributed money in any way towards the purchase, improvement or maintenance of the property and are not entitled to benefit from the sale of the property, then according to CRAG, you are simply a legal

owner and the council should not normally consider you as having any beneficial interest in the property. However, it is not always straightforward where you have been given a discount on a 'right to buy' property – see below for more information.

If an agreement is signed by the joint legal owners when the property is purchased, which gives details of the arrangement of beneficial ownership and makes this clear to the Registers of Scotland, this should be accepted by the council as 'written evidence' of how the beneficial interest should be assessed.

However, a high court decision in England has prompted several councils to take a different view of the situation when a local council has sold a council property to their tenant (under the Right to Buy Scheme) with a substantial discount on the market value, but someone else, such as a relative, has paid for the property at the discounted price on the tenant's behalf. The councils in question may be treating the 'discount' given to the council tenant as if it was the same as the tenant's financial contribution to the value of the property (ie the tenant's beneficial interest). Some councils have also claimed that the person who is paying the purchase price (ie the relative) is merely a creditor and not actually a beneficial owner, particularly if there is no paperwork showing the arrangement.

There has since been another decision (by the Adjudicator to the HM Land Registry in England) showing that Right to Buy discounts should not automatically be treated as giving a person a beneficial interest.

The decision highlights that each case should be looked at individually, on its own merit. The council should consider:

- who paid the purchase price
- whether there was a mortgage involved in the purchase
- who paid the mortgage and for how long.

However, the HM Land Registry decision involved a 'constructive trust' which eventually benefitted the family who had paid the mortgage over a period of time, giving them all the beneficial interest and not the older person, even though it was the older person who had had the 'right to buy' originally.

Independent Age has tried to clarify if these cases could apply to Scotland but have been unable to do so. You may want to seek specialist legal or housing advice on this matter. You should also bear in mind that any complaint that is not resolved by the council can be raised with the Scottish Public Services Ombudsman). Please see chapter 16 for more details on this.

Please contact an advice service for further advice, such as Independent Age (0800 319 6789, independentage.org) although we cannot provide legal advice, advice on constructive trusts or property law advice.

Valuing your beneficial interest in the property

Once it is clear that you have a beneficial interest in a property, the council must follow the rules in CRAG to show what the actual monetary value of your beneficial interest is, and then use this figure in your financial assessment. The council should not simply value the property as a whole

and assume that the value of your beneficial interest is the same amount as your share of the market value of the property.

There are two main factors that should be considered when working out the value of your beneficial interest:

- your ability to re-assign your share of beneficial interest to someone else
- whether there is someone willing to buy your share of beneficial interest (either from the open market or from a willing buyer).

For example, if you and someone else hold joint beneficial interest in a property with a value of £100,000, it may appear initially that the value of your share of the beneficial interest is £50,000. However, this would only be the case if the other joint owner, or another willing buyer, agrees to buy your beneficial interest for £50,000. If the other joint owner or another willing buyer could only afford £25,000, then the value of your beneficial interest would be £25,000. It is the amount of your interest in the property that has to be valued, not the property itself as a whole. Also, 10% of the costs of transferring the deeds are taken out of this figure, so the figure in this example would reduce to £22,500, which would be taken into account in your financial assessment.

It is important for someone proposing to buy your beneficial interest to make a reasonable offer. If, for example, you sold your beneficial interest to a joint owner (ie a family member) for an unreasonably low amount, the council may consider this to be 'deprivation of capital', ie an

attempt to avoid using your capital to pay for care fees (see chapter 8).

Currently CRAG rules state that if the other joint owner(s) are not willing to buy your share of beneficial interest, it is possible that your property may not be classed as having a market value: 'it is highly unlikely that any outsider would be willing to buy into the property, unless the financial advantages far outweighed the risks and limitations involved. The value of the interest, even to a willing buyer, could in such circumstances effectively be nil. If the local authority is unsure about the resident's share, or their valuation is disputed by the resident, again a professional valuation should be obtained'.

However, it can become much more complicated if a Trust is involved. For example, joint or common ownership may create a Trust (ie by holding the property on trust). The value of the interest in the property may then depend on Trust law. For example, it may look at the purpose of the trust, ie whether it was to enable another person (a spouse or partner, or another family member) to remain living in the property if the older person can no longer live there. It will also depend on whether the purpose still exists and whether Trust law would treat the interest in the property as having a value. This can be a highly complex area and you may want to take specialist legal or property advice.

Disputes about the valuation of beneficial interest

If there is a dispute between what you feel is the value of your beneficial interest in a property and what the council states is the value, the guidance recommends that the

council seek a 'professional valuation'. You may also want to do this for yourself. You can find a qualified property surveyor by contacting the Royal Institute of Chartered Surveyors (0870 333 1600, [rics.org](http://RICS.org)). If the council arranges this, it will usually do so through their own district surveyor's department or through a contracted company. The surveyor/valuer's report should state the estimated valuation of your 'interest' (share) in the property. It should also set out the reasons for the valuation, based on:

- the experience of the valuer
- comparisons with other similar properties and circumstances (if any are known)
- any assumptions made in the valuation process and other factors in this specific case (including the ownership details of the property) used to reach that valuation
- the 'risk' a potential willing buyer would be taking in purchasing that share of the property (and how that 'risk' affects the valuation – i.e. Trust law might not give occupancy rights to a potential willing buyer and even if it did, it is possible a discount may be required).

Beneficial interest, as we can see, can be a very complicated area of the financial assessment, and may involve some parts of Trust and Property law. It may require an examination of the facts of each case and comparison with any relevant legal cases (the cases mentioned in England may apply to Scotland but this is as yet unclear) so you may want to contact an advice service, such as Independent Age (0800 319 6789, independentage.org or seek legal advice via the Legal Services Agency (0131 228 9993, lsa.org.uk) if there is a

dispute about the value of your beneficial interest for the financial assessment. You also have access to the council complaints process and then the Scottish Public Services Ombudsman if required (see chapter 16).

Adapting your property to accommodate or care for a parent

While there may be good intentions in adapting your property to accommodate or care for a parent, there could be future problems. This is particularly likely where the older person is paying towards the purchase price, the mortgage or any adaptations. In some cases, the council may decide that the older person has a beneficial interest in the property (ie because they have contributed to the value of the property). The charging guidance (CRAG) would need to be followed when valuing the older person's interest in the property, should the older person need to move to a care home. Another concern is that, depending on when and why the move took place and the financial circumstances, the council may decide that 'deprivation of capital' has occurred. They should look at the timing, circumstances, reasons for and intention of the decision (see chapter 8). If it becomes an issue you may want to contact Independent Age to discuss the 'reasonableness' of the council in deciding that it was deprivation of capital. You can also use the council's complaints process and you may want to take legal advice (see chapter 16).

8 Deprivation of capital

If you give away, or sign away your property or savings deliberately in order to avoid paying for your care home costs, this is called 'deprivation of capital'.

If the council decides that it is deprivation of capital and this is a reasonable decision based on the available evidence, the council then has to decide whether to treat you as having 'notional' capital. This allows both the Department for Work and Pensions (DWP) and the council to treat you as if you still have the capital whether you do or not.

A council can also decide whether to try to recover the capital from you, or whether it is possible to 'transfer' the 'debt' to the person the capital was transferred to, and make that person pay the money for the care fees.

For example, if you gave each of your grandchildren some money three years before you needed care, and at the time you were in relative good health, it may be unreasonable for the council to assume that you gave the money away in order to avoid paying care home fees. However, if you signed your property over to your son at a time when your health circumstances indicated that you may need residential care in the future, the council might decide that you did so in order to avoid having to pay the care home fees. There is no time-limit on how far back the council can go to look for information on what they consider to be 'deliberate' deprivation of capital.

Some of the ways in which you may be considered to have deprived yourself of capital include:

- giving away money
- converting capital into another form that would usually be disregarded in the financial assessment
- transferring the ownership of property
- spending your capital on something not necessary, for example, a very expensive painting or holiday.

There may be other issues to consider. If you were thinking of 'signing over' any shares in a property that you own now in order to avoid paying care home fees in the future, then you may put your right to remain in the property at risk if you do not need care in a care home. There may also be tax implications such as pre-owned assets tax which HMRC ([hmrc.gov.uk](https://www.hmrc.gov.uk)) can advise on.

9 When couples move into a care home

If you and your spouse, or partner, both move into a care home, your local council will assess you as separate individuals with separate finances. This means you can each have savings of up to £26,000 and the local council will be responsible for contributing towards the cost of the accommodation part of your care home fees. You may also be eligible for free personal and nursing care.

If you have joint savings, these will be split in half for the purpose of the financial assessment. If you hold money in a joint account in unequal proportions, you may want to close the joint account and open your own account with your portion of the savings. The financial assessment can then be 'tweaked' by the council to account for the actual amount you held in the joint account. You may be asked for written proof that you own a certain percentage of the money held in the joint account if it is not held equally.

You may want to claim Pension Credit as individuals rather than as a couple. This is because it is worth more to you (per person) if you claim as an individual. If you move into the same care home as your spouse, civil partner or partner, and have separate living arrangements, you can still be treated by the DWP as having separate finances when you claim Pension Guarantee Credit. It is important that you both put in new claims to make sure that you are both receiving the right amount of benefit.

If the DWP treat you both as a couple for Pension Guarantee Credit you may wish to contact an advice

service, such as Independent Age (0800 319 6789, independentage.org) for further advice.

10 When is it the council's duty to pay more for my care home placement?

If you are eligible for support from the council towards your care home fees, the council should tell you the amount they will usually agree to pay for someone with your level of care needs.

Local councils are allowed to set standard rates for how much they are prepared to pay towards the accommodation costs of care homes:

- one standard rate for residential care homes
- another (higher) standard rate for nursing care homes. This is based on a nationally agreed amount negotiated between the Convention of Scottish Local Authorities (COSLA), the Scottish Government and representatives of the Scottish care home sector.

From 8 April 2013, the standard rates for publicly funded service users will be:

- £580.11 per week with nursing care
- £499.38 per week without nursing care.

The care homes that the local council social work department suggest you move to are usually those which are the council's 'preferred providers'. A preferred provider is a care home which agrees to make a contract with the council at the council's standard rate. You should not be limited to these care homes (although this will depend on local availability). Local councils should not set an arbitrary or random standard rate or limit on the amount they will pay towards your care home fees [6], as the rate that the council should pay should be a realistic amount based on

your individual assessed needs as stated in your care plan. You should be given a copy of your care plan.

The council has a duty to meet your assessed care needs, not your preferences. If you prefer a more expensive care home rather than the care home the council has chosen for you - which is available and can meet your individual assessed needs - then you may have to find a way to pay for the extra fees. A 'third party', such as a relative or friend, can decide they want to pay the difference between the cost of the care home you prefer and the council's standard rate, to allow you to live in the more expensive care home of your choice. If you have a 12-week property disregard or deferred payment you can also pay your own top-up (see chapter 6).

For more information about top ups, see our guide **Care home fees: Third party top ups in Scotland** (Guide 53).

11 Paying your own care home fees

If you have more than £26,000 in capital, you will not be eligible for financial help from the council towards the accommodation costs of your care home fees and will be known as a 'self-funder'. You will have to pay your own accommodation costs of your care home until your capital reduces to the upper capital limit. You may still be eligible to receive free 'personal care' and 'nursing care' payments from the council (worth up to £246 a week) towards the cost of your care home fees (see chapter 2).

When your savings are within two to three months of reaching the upper capital threshold of £26,000, you should inform your local council. The council should then make the necessary arrangements to carry out a needs assessment, or re-assessment, for you as soon as possible.

If you receive personal care payments towards your care home fees, you will stop receiving Attendance Allowance, the care component of Disability Living Allowance or daily living component of Personal Independence Payment, after 28 days of being in the care home. If you receive Pension Credit, any 'disability premium' will also stop after 28 days (see chapter 4).

Seeking advice about care fee planning

As the system for funding care home placements is so complex, you can seek more information and guidance about the financial products available to help people invest money to pay for future care home fees. For example, if you have enough money in savings to invest in payment plans, it may be possible to pay for your own care for as

long as possible. You may also be able to maintain ownership of a property if you do not want to have to sell the property to pay for your care, or at the very least protect some of your capital (from savings/property) from being used to pay for care fees. A 'Later Life' accredited adviser can assess whether these products may be beneficial for you or otherwise. You can contact the Society of Later Life Advisers (0845 303 2909, [societyoflaterlifeadvisers.co.uk](https://www.societyoflaterlifeadvisers.co.uk)) to find your nearest accredited 'Later Life' adviser.

You can obtain financial advice from the following organisations: Saga Care Funding advice service (0800 096 8703, [saga.co.uk/money-shop/care-funding](https://www.saga.co.uk/money-shop/care-funding)), Paying for Care ([payingforcare.co.uk](https://www.payingforcare.co.uk)) or Eldercare Group (0800 082 1155, [eldercaregroup.co.uk](https://www.eldercaregroup.co.uk)). It is best to shop around to compare products and ensure you are getting the best product for your situation if indeed these products are suitable for your circumstances.

12 Temporary stays in a care home

You may move into a care home temporarily, perhaps to give the person who cares for you a break or for a trial period while you decide if you want to make it your permanent home.

A temporary care home placement is defined as one where you intend to return to your own home within 52 weeks. This should be clearly agreed between you, the care home and the council before you move into the care home, so that the correct financial assessment is done by the social work team.

If the council has assessed you as temporarily needing care in a care home, it does not have to carry out a full financial assessment for the first eight weeks but it can choose to do so. If the council does not carry out a full financial assessment for the first eight weeks, you will be asked to pay what the council thinks is a 'reasonable' amount. If you are not happy with the amount you are charged, you can ask for a review.

After eight weeks, the local council will assess your contribution to your care home fees in the same way as for permanent care home residents. The difference is that the council must ignore the value of your property, any financial commitments such as mortgage payments, and it may also disregard some of your income to pay housing-related costs that you might need to continue if you plan to return home.

Eligibility for personal and nursing care payments

If you are temporarily staying in a care home following a needs assessment, the council should still pay any personal and nursing care payments (see chapter 2) to the care home on your behalf, if you are eligible and the council has agreed a contract for them with the care home.

Eligibility for benefits

Attendance Allowance and the care component of Disability Living Allowance or daily living component of the Personal Independence Payment (PIP) will normally stop after you have been in a care home for 28 days if you are either:

- part-funded by the council (ie you receive help with the accommodation costs or personal care payments)
- you are fully-funded by the NHS (ie you receive NHS continuing healthcare funding).

This may also affect any 'disability premium' you receive as part of Pension Guarantee Credit.

If you need to go in and out of a care home for short periods, there is a 'linking rule', which means that the days for each stay will be added together if you leave and then re-enter the care home within 28 days. If you need regular stays in a care home to give your carer regular breaks, you should discuss this with a social worker to try to prevent your Attendance Allowance or Disability Living Allowance (or Personal Independence Payment) from being stopped.

If you move into a care home on a trial basis because you are unsure whether you want to move permanently into a care home, you can continue to receive Housing Benefit, Council Tax Support and Pension Guarantee Credit (if it

includes Housing Costs) for up to 13 weeks while you make this decision.

If you are receiving temporary care in a care home (not a trial period), you can continue to receive Housing Benefit, Council Tax Support or Pension Guarantee Credit (if it includes Housing Costs) for up to 52 weeks (possibly longer for Housing Benefit if your stay is unlikely to be substantially more than 52 weeks). Your property's value will be ignored until you decide whether your move to the care home will be permanent or not.

If your Pension Guarantee Credit does not include Housing Costs, you may be able to continue receiving it in a care home, although you will need to notify the DWP of your change in circumstances, to make sure that you are receiving the right amount of benefit.

Some people go into a care home as a temporary resident and then, after a few weeks, decide to stay in the care home permanently. It may be important to make sure that the council agrees that you have an assessed need for permanent care so that they can help to pay for care fees. Once you become a permanent resident, the council will reassess your finances, but you should also check that the council has assessed your needs and agrees that you need permanent residential care. You should only have to contribute to your care home fees, following your needs assessment, once you become a permanent resident, not from the date you entered the care home.

13 Temporarily being away from a care home

You should ask the care home manager and/or your local council social work department (if they agreed the contract with the care home) about what happens if you have to leave the care home temporarily, for example, to go on holiday with your family or to go into hospital. The contract agreed between the care home and the council and/or between you and the care home, should make it clear what will happen in these circumstances. If the contract does not state what will happen, you may want to ask that this is added to the contract (see chapter 14).

If you are away from the care home temporarily because you have to go into hospital, you should continue to receive your usual amount of State Pension and/or Pension Guarantee Credit.

If you are 'absent' from the care home for more than 14 days, the council will stop making personal and nursing care payments to the care home.

14 Arranging a contract with the care home

It is important to have a written contract which clearly sets out the agreed terms and conditions.

If you are unhappy with the contract you are asked to sign you can discuss this with the council or care home manager in the first instance. You could also contact the Care Inspectorate (0845 600 9527, careinspectorate.com) or Citizens Advice Consumer Service (08454 04 05 06) for advice.

If social work makes the contract with the care home

If the council social work department has arranged your placement in a care home, it is responsible for making sure that the full cost is paid. It must also make sure that it gets the best care for you at the best price. The council should agree a contract with the care home owner, saying how much the fees are and what sort of care you should receive. You should always ask to see the contract between the council and the care home to make sure it includes any special requirements stated in your care plan.

The care home's fees should cover all of your care needs, but you should check if you have to pay any extra charges. These might include the cost of outings, hairdressing and leisure activities.

If you make your own contract with the care home

If you are self-funding, either for all the fees or for the accommodation costs only, it is very important that you have a written contract (assuming the council is not agreeing the contract on your behalf – see below). The

contract should be with the care home and should set out clearly the agreed terms and conditions. You may not want to sign a contract until you are sure what services the home will provide for you, what is expected of you, and whether you feel you are happy with these arrangements. If you are unhappy with any part of the contract you are being asked to sign, you could contact Citizens Advice Consumer Service (08454 04 05 06). The 'National Standards for Care Homes for Older People' also includes a section on fees and contracts.

In some cases, the council can agree the contract on your behalf even if you are self-funding the accommodation costs of the fees – a route 3 contract for free personal and nursing care which includes a contract for the accommodation provided. A route 2 contract means two contracts – one between the council and care home for free personal and nursing care and one between the care home and the resident for the accommodation element of the fees. Please contact us at Independent Age if you need more information about contract routes for free personal and nursing care.

What the care home contract should include:

- whether your stay is permanent, temporary, or a trial stay
- information about the room you will be occupying
- the care and services, including arrangements for meal, drinks and laundry
- the fees or charges and how they are calculated, how often and when the fees are due
- who is responsible for paying the fees

- whether there are additional services to be paid for
- the care home's rights and obligations
- how to make a complaint if you are not satisfied with your care
- the period of notice you will have to give or could be given to move out
- how the care home will meet any special requirements, such as dietary or religious needs
- how any changes to your care needs will be managed
- how your money and valuables will be secured, and who holds the responsibility for insuring them
- what liability insurance the care home has
- what training the staff receive
- whether you will be charged to hold your place while you are away from the care home temporarily
- how you can keep your property safe.

What to check in a contract:

- how often you will have to pay and who is responsible for paying, including how long the fees are payable after someone has died
- if the care home is excluded from liability for causing death or injury
- if the care home excludes itself from providing a service
- if the care home is excluded from looking after your property and possessions
- if the care home excludes itself from responsibility if your clothes are damaged in the laundry
- if the care home is allowed to make significant changes to what it supplies to you without consulting you
- if the care home can change your room without consulting you
- if the care home can impose unreasonable restrictions or obligations on you

- if staff can enter your room without your consent
- if the care home has the right to keep or dispose of your possessions.

15 Moving to a care home in a different area

You may wish to move to a care home in a different council area to the council area you currently live in. This may be to move nearer to your family or to move back to the area where you were brought up.

Council funding

If your local council has assessed you as needing care and has agreed to fund you in a care home, you are free to choose a care home anywhere in Scotland as long as it is available and can meet your care needs. You can also move to England or Wales, but this can be more complicated due to the difference in the funding system for care home placements. Moves from Scotland to England or Wales are referred to as 'cross-border placements'. If you need to move cross border, discuss this with your local council social work department as part of the needs assessment process. You may also want to contact Independent Age on 0845 262 1863 to discuss the process and guidance covering this issue.

Moving to another country in the UK is complex financially because personal care payments are unique to Scotland and there is no equivalent in the rest of the UK. There are similar payments to nursing care available in other parts of the UK; however the payments and eligibility criteria are different. For example, in England people can receive a 'registered nursing care contribution' (RNCC) and in Wales the NHS Funded Nursing Care Payment from the NHS is paid towards their care home fees.

If you already receive funding from your council, but you move to a different country in the UK, any personal and nursing care payments, as well as any contribution from the council to accommodation costs you receive, will still be paid by your former council when you move. Although they may not be for exactly the same amount as that depends on the terms of the contract arranged by the council in the new area who will agree to pay back the original council. This is because your care home fees (or just the free personal and nursing care element if you are self-funding) will continue to be the responsibility of the council that originally carried out your needs assessment. However, it is important that your reasons for moving to another area are included in your needs assessment. If they are not included, you should ask your local council for a review of your needs assessment to ensure they are considered and included.

If you need to move to a more expensive area, it is reasonable to expect the council to consider increasing its standard rate to enable you to move to a care home in that area, if that is required.

Self funding

If you are self-funding and think that you will not require council funding, you can choose any care home that meets your care needs and can offer you a place. However, where you have organised your own move, are paying for your own care and have not been assessed as eligible for free personal and nursing care, you will need to apply to the council in the new area if you need help with care home

funding. There are different capital limits in England and Wales – for more information, see our guides, **Care Home Fees: paying them in England** (Guide 16) and **Care Home Fees: paying them in Wales** (Guide 72).

What payments you may be eligible for will depend on what is available in the country you have moved to. It is important to find out the cost of care homes in the area you are moving to, especially if you need council help with the care fees now or in the near future. For the same reason, you may wish to find out how much the local council in the new area usually pays (the 'standard rate') for care home places.

You can obtain details of care homes across the UK from FirstStop Care Advice (0800 377 7070, [housingcare.org](https://www.housingcare.org)). You can get details (including inspection reports) of care homes in Scotland from the Care Inspectorate (0845 600 9527, [careinspectorate.com](https://www.careinspectorate.com)), details (including inspection reports) of care homes in England from the Care Quality Commission (03000 616161, [cqc.org.uk](https://www.cqc.org.uk)) and details (including inspection reports) of care homes in Wales from the Care and Social Services Inspectorate for Wales (0300 062 8800, [cssiw.org.uk](https://www.cssiw.org.uk)). You may also wish to contact an advice service such as Independent Age (0800 319 6789, [independentage.org](https://www.independentage.org)) if you need further information.

16 What to do when things go wrong

If you disagree with a decision or you are unhappy with the service provided by your care home, you may want to make a complaint. Your first step is to try to resolve the matter informally. If you are unhappy with the council/care home manager's response, you may want to consider making a formal complaint. All care homes and councils have a formal complaints procedure and the council complaints procedure is based on the Model Complaints Handling Principles introduced by the Scottish Public Services Ombudsman (SPSO). You can obtain a copy by telephoning the council directly and requesting a copy, or it may be available on the council's website. For more information about your rights to make a complaint in Scotland, see our guide **Complaints about community care and NHS services in Scotland** (Guide 54).

If you are concerned about the standards of care within the care home, you can also make a complaint to the Care Inspectorate (0845 600 9527, [careinspectorate.com](https://www.careinspectorate.com)) who register and regulate all care homes in Scotland.

If you have exhausted the council or care home complaints process, you may be able to raise your complaint with the Scottish Public Services Ombudsman (0800 377 7330, [spsso.org.uk](https://www.spsso.org.uk)). They offer a free, independent and impartial complaints resolution service.

You may find it useful to seek the assistance of an independent advocate if you find the prospect of making a complaint daunting. An independent advocate is independent of services, such as those run by the council,

and is there to support you to get the outcome you want, or have a right to. They will be able to help you to voice your complaint and represent your views/rights to the professionals involved to ensure that your rights are protected. To find an independent advocate in Scotland, contact the Scottish Independent Advocacy Alliance (0131 260 5380, siaa.org.uk). You may also want to contact an advice service, such as Independent Age (0800 319 6789, independentage.org) to discuss your options.

[1] 'CEL (2008) 6' available from:

www.sehd.scot.nhs.uk/mels/cel2008_06.pdf

[2]

http://www.sehd.scot.nhs.uk/publications/CC2013_03.pdf

[3] You can access CRAG using this link -

http://www.sehd.scot.nhs.uk/publications/CC2013_03.pdf

[4] See CRAG guidance here: -

www.sehd.scot.nhs.uk/publications/CC2013_03.pdf

[5] See link to CRAG here-

www.sehd.scot.nhs.uk/publications/CC2013_03.pdf

[6] The 'Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993'

This guide is not a full explanation of the law and is aimed at people aged over 60.

If you need any of this information in another format (such as large-print or Braille), please contact our Information Manager on 020 7605 4294 or email comms@independentage.org

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