



counsel + care   
for older people, their families and carers

guide

Information from Counsel and Care: 52

# Care Home Fees: paying them in Scotland

Living in a care home can be very expensive. Some people are able to pay their own fees; but many need financial support 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, and are unable to pay their own fees.

Counsel and Care produce separate guides on England and Wales.

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Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland Assemblies means there are differences in the ways each region cares for and supports older people. The information in this guide applies essentially to Scotland although there may be similarities with England, Wales and Northern Ireland.

We produce a large range of guides which apply to all areas of the United Kingdom. They can be downloaded from [www.counselandcare.org.uk/helping-you/guides](http://www.counselandcare.org.uk/helping-you/guides) or posted to you by calling our guide orderline on 020 7241 8522.

This guide has the following sections:

<b>1</b>	<b>Moving into a care home .....</b>	<b>6</b>
<b>2</b>	<b>Paying the cost of living in a care home .....</b>	<b>7</b>
	2.1 What happens if you have personal and/or nursing care needs? .....	8
<b>3</b>	<b>The local council financial assessment.....</b>	<b>12</b>
	3.1 Does your spouse have to pay towards your care home fees?.....	12
	3.2 When you and your spouse or partner move into a care home .....	13
	3.3 The Personal Expenses Allowance.....	14
	3.4 Occupational and private pensions .....	15
	3.5 Savings and capital .....	15
	3.6 Capital in bonds .....	16
	3.7 Tariff income .....	16
	3.8 12-week property disregard .....	16
	3.9 A council loan while your property is being sold.....	17
	3.10 Delaying the sale of your property (deferred payment) .....	18
	3.11 Jointly owned property .....	22
	3.11.1 If you are a legal owner and a beneficial owner .....	22
	3.11.2 If you are a legal owner but not a beneficial owner .....	23
	3.11.3 Assessing the value of beneficial interest .....	24

3.11.4	Establishing the value of your beneficial interest if you are a joint beneficial owner.....	24
3.11.5	Seeking a professional valuation of your beneficial interest .....	25
3.11.6	The impact of an older person not being seen to have joint beneficial interest in property .....	26
3.12	What happens if someone else lives in your property?	27
3.13	What happens if your property is rented out? .....	29
3.14	Adapting your property to accommodate and/or care for a parent.....	30
<b>4</b>	<b>Deprivation of capital .....</b>	<b>32</b>
<b>5</b>	<b>Pension Credit .....</b>	<b>33</b>
5.1	Pension Savings Disregard .....	33
<b>6</b>	<b>Attendance Allowance and Disability Living Allowance ..</b>	<b>34</b>
<b>7</b>	<b>When it is the local council's duty to pay more .....</b>	<b>35</b>
7.1	When it is not the local council's duty to pay more.....	35
<b>8</b>	<b>Paying your own fees .....</b>	<b>37</b>
<b>9</b>	<b>Temporary stays and respite care .....</b>	<b>40</b>
9.1	Free personal and nursing care during a temporary stay .....	40
9.2	Temporary stays and your benefits .....	40
<b>10</b>	<b>Temporarily being away from a care home .....</b>	<b>42</b>
<b>11</b>	<b>Selecting a care home .....</b>	<b>43</b>
11.1	Moving to a different area.....	45
<b>12</b>	<b>NHS-funded continuing healthcare .....</b>	<b>47</b>
<b>13</b>	<b>Contracts with a care home .....</b>	<b>48</b>

13.1	Local council Social Work department contracts with the care home.....	48
13.2	Individual contracts with the care home .....	48
13.3	Arranging payment of fees.....	51
<b>14</b>	<b>Challenging decisions .....</b>	<b>52</b>

# 1 Moving into a care home

As you get older, it may be that you find it more difficult to cope in your own home. Key to identifying how to overcome any difficulties you may be experiencing at home is an assessment of your individual needs co-ordinated by your local council social work department. (For more information about this needs assessment, please see guide **50: Assessment and services from your local council in Scotland**.) The assessment of need may identify that you either need help in your own home or adaptations to your home to be able to cope. (For more information about living in your own home, please see guides **14: Help at Home: what may be available in your local area**, **28: Housing: adapting your home to stay independent** (which has a section on mandatory and discretionary housing grants in Scotland), and **29: Housing: how to pay for the maintenance of your home**.)

The assessment may, though, identify that the only way to meet your needs is by you moving into a care home. If it has been decided that you need to move into a care home because the risk is too great for you to stay in your own home and you agree with the decision, all of these needs should be written down, whether you are paying for your own care home fees or whether the council have funding responsibility for your placement.

## 2 Paying the cost of living in a care home

Every local council social work department must follow Government rules from the Charging for Residential Accommodation Guide (CRAG) when they work out how much you will need to pay towards your care home fees.

The council will need to know the level of your capital savings and weekly income (including any beneficial interest you may have in property – please see section 3.11). If you have savings and capital of less than £14,000, you will not be expected to use any of this money to pay the care home fees. However, you will have to contribute all of your weekly income towards the fees (with a few exceptions) except for £22.30 a week, which you can keep to spend on essential personal items. This amount is called your Personal Expenses Allowance. You may also keep any Pension Savings Disregard you have been awarded up to £5.75 a week (see section 5.1).

If your savings and capital are worth between £14,000 and £22,750, the council will contribute toward the fees of the care home, but you will have to pay a weekly charge known as ‘tariff income’ (see section 3.6) from your savings in addition to your assessed contribution from your income .

If you have savings and capital over £22,750, you will have to pay all of the care home fees until your capital reduces to this limit (or the limit at the time as it changes every April). If your capital is less than £22,750, but your weekly income is more than your care home fees and the Personal Expenses Allowance added together, you will have to pay all of the fees.

If you have complex, unpredictable or rapidly deteriorating nursing care needs you may be entitled to full NHS funding for your care home fees. This is called NHS continuing healthcare. Your local Health Board must have written eligibility criteria for this type of funding. For more information, see section 12 and guide **27: Continuing Healthcare: should the NHS be paying for your care?**

## **2.1 What happens if you have personal and/or nursing care needs?**

In Scotland, if you have personal care needs which need to be met in a care home, your local council pays £156 per week for your personal care. If you need nursing and personal care, the local council will pay £227 per week for your care (the nursing care contribution is £71 per week). You may be expected to cover the rest of the costs of the care home, which will be the accommodation fees. In order to work out whether you can afford to pay these, you will need to have a financial assessment carried out by your local council social work department.

## **2.2 If you are eligible for free personal/or and nursing care funded by the council**

A court judgement (Lord Macphail, Argyll and Bute Council for Judicial Review of the Scottish Public Services Ombudsman (17/10/2007) means that, even if you have been assessed as needing care in a care home, local authorities only need to pay free personal and nursing care once they have “contracted” (agreed to pay the care home for your personal and nursing care) with the care home. This means that if your local authority has a waiting list for free personal and nursing care payments and you arrange the move to the care home yourself you might not receive the free personal and nursing care payments until the local authority has contracted with the care home. Therefore you may be responsible for all of the fees of the care home until that point.

### **The contract with the care home – contractual routes**

Older people moving to a care home should have the choice of how the contract is made with the care home (if you are eligible for help to pay the care fees). However, if a **private** care home is not willing to agree a certain contract route, the contract cannot be completed. There are three types of contract which can be made, and these are known as routes 1, 2 or 3.

### **Contractual Route 1 - The self determined route**

This route may suit older people who are arranging their own care without a social work assessment, or because they have been assessed as not being eligible for residential care.

### **Contractual Route 2 - The mutual route**

Once the older person has been assessed as eligible for free personal and/or nursing care payments they may choose the mutual route. If so the council should enter into a contract to provide the care home with payments for personal and/or nursing care and the older person makes a private contract for the costs of living and other services with the care home if they are liable for the rest of the fees. The free personal and/or nursing care payments are made direct to the care home.

Further guidance and clarification on route 2 is available from the Scottish Executive ([www.scotland.gov.uk](http://www.scotland.gov.uk)) - Circular CCD 5/2002

### **Contractual Route 3 - The integrated route**

Once the older person has been assessed as eligible for residential care and for free personal and/or nursing care payments they can choose the integrated route. The council manages all of the contract arrangements with the care home on the older person's behalf. The council would therefore have a single contract with the care home, and the older person would make a contract for payment of their assessed contribution to the council. There may be advantages for the older person in using this method if the care home in question is

willing to accept this contractual route. It may end up less expensive for the older person to use this contract route. This is because the council contract may contain restrictions on fee increases, and may restrict the fee to 'the standard rate', which is likely to be less than privately arranged rates (i.e. the two tier charging system). It may also monitor the quality of care provided.

## 3 The local council financial assessment

If you are entitled to financial assistance from your local council towards the cost of the care home fees, you have to use most of your income, including Pension Guarantee Credit if you receive it, as a contribution towards the fees. But some types of income are not included at all in the council calculation. These include:

- The mobility component of Disability Living Allowance
- (War Pension Scheme) mobility supplement
- War Widows special allowance (also referred to as War Widows special payments)
- Some charitable payments
- Pension Savings Disregard.

If you receive financial assistance towards the fees from your local council, your Attendance Allowance or Disability Living Allowance care component will stop after you have been in the home for four weeks. This is also the case if you receive assistance with the cost of the care fees in the shape of NHS continuing healthcare funding.

### 3.1 Does your spouse have to pay towards your care home fees?

Husbands and wives are financially assessed on an individual basis for the purpose of establishing care home fee contributions once one of them makes a permanent move into a care home. The previous

principle in law that husbands, wives or those in a civil partnership had a duty to maintain each other financially has now been overturned in law. Since section 62 of the Adult Support and Protection (Scotland) Act 2007 repealed the liable relative's legislation in the National Assistance Act 1948, the council no longer has the right to ask your spouse or civil partner to pay some money towards the cost of your care home fees (previously called the 'liable relative' payment). The council also does not have the right to make the spouse give details about his or her income and savings.

If one spouse or partner remains in the marital home the value of the property will not be taken into account for as long as they continue to live there. For further information, see section 3.10.

### **3.2 When you and your spouse or partner move into a care home**

If you and your spouse or partner moves into a care home, your local council will assess you financially as separate individuals with separate finances. This means you can have savings of up to £22,750 each and the local council will have responsibility for payment of your care home fees which you will contribute to from your income, providing your weekly incomes are not above the care home fees level. If you have joint savings, these will be split in half for the purposes of the financial assessment.

If you move into the same care home and have separate living arrangements you can still be treated by the Department for Work and Pensions as having separate finances if you claim Pension Guarantee Credit. Recent rulings indicate that even a couple sharing a room will not necessarily be assessed as a couple unless they can be seen as being one household. If the Department for Work and Pensions treat you and your partner as a couple for Pension Guarantee Credit you should contact our advice service for further advice.

The local council will have a standard rate which they set as their limit for what they will pay for a care home placement if you have capital under £22,750. If you find a care home placement where the fees meet the standard rate, the local council will pay for your care there. If, however, you choose a care home which charges more than the local council's standard rate, someone you know (usually a close family member) may be asked to make up the difference by providing a third party top up. This should only be if a cheaper care home that meets your care needs is also available. See guide **53: Care home fees: third party top-ups in Scotland** for more information.

### **3.3 The Personal Expenses Allowance**

You will be allowed to keep a Personal Expenses Allowance of £22.30 per week from your income which you can spend as you wish (the amount is currently under review by the Scottish Government).

The council has the discretion to allow you to keep more than £22.30. This could be because you have to pay ground rent or standing charges for a house that you are trying to sell. You can also ask to have your Personal Expenses Allowance increased to help support your spouse or partner who remains at home, for instance, if they need to complete repairs to the house, if you have left them with debts, or if they are living on a low income.

### **3.4 Occupational and private pensions**

During your financial assessment, the council must ignore half of your occupational pension as long as you use the whole of that half to support your husband or wife at home. The same rule applies if you receive income from a retirement annuity. This rule only applies to married couples. If you are not married but you would like to use some of your pension to support your partner at home, you have to ask for your Personal Expenses Allowance to be increased under the discretionary rules explained in section 3.3.

### **3.5 Savings and capital**

The council will add up all of your savings and the value of any capital that you own in your name. Any savings or capital you own jointly will be divided equally between you and your spouse or partner. If you hold money in a joint account in unequal proportions you may be able to close the joint account and open your own account with your

portion of the savings. You may be asked for written proof that you own more than half of the money held in the joint account.

### **3.6 Capital in bonds**

Currently when your local council assesses your finances, they are allowed to take into account any capital you have in bonds, unless they have a life assurance element attached to them. Income from bonds with a life assurance element will still be taken into account.

### **3.7 Tariff income**

Any actual income you receive from capital, such as interest, is not counted as 'income' but is added to and treated as capital (savings etc). You will be assumed to have £1 a week extra income for every £250 or part of £250 you have between £14,000 and £22,750. This amount will be added to the assessment of your weekly income. The amount of tariff income reduces as your savings reduce towards £14,000. When you reach the lower capital limit (note it changes every April) you no longer have to pay a tariff income but you will still pay an assessed contribution from your income.

### **3.8 12-week property disregard**

If you have less than £22,750 when you move into a care home for the first 12 weeks from the date that your stay has been agreed as permanent, the council must ignore the value of your property. This is called the 12-week property disregard. This means that the council

must contract with the care home and pay your full fees, and invoice you for your assessed financial contribution. The council may only pay up to their usual rate for a care home placement but you are allowed to pay your own top up whilst a 12 week disregard is in place or a relative can until the property is sold. If your property is sold before the 12-week period ends then the disregard ceases. After 12 weeks the value of your property will start to be counted as part of your capital.

### **3.9 A council loan while your property is being sold**

While your home is for sale, the council may 'loan' you the fees of the care home. This is sometimes referred to as 'interim funding'. This financial assistance will stop if you sell your property. You will usually be expected to sign an agreement known as a deferred payment, see section 3.10. You will have to pay back to the council the money it has paid towards your fees when the property is eventually sold. If your property is in the process of being sold, you will still be able to claim your entitlement to Pension Guarantee Credit for up to 26 weeks, or a year in exceptional circumstances. Please contact us if you would like further advice on this issue.

The council will usually seek a 'standard security' or 'charging order' on your property to make sure that it is repaid the money once the property is sold. If your council refuses to financially assist you while your house is being sold you should contact our advice service for further information and support.

### 3.10 Delaying the sale of your property (deferred payment)

If you have less than £14,000 in capital savings, but own a property, and you do not wish to sell your property while you are living in the care home permanently (or are unable to sell it), you can also request a long-term loan known as a deferred payment agreement.

Deferred payments allow people to avoid selling their homes up-front to meet their care home fees by entering into a legal agreement to have part of their fees paid by their local authority and the balance settled from their estate after they die.

Guidance 're-affirms the Scottish Executive's expectation that all local authorities will operate deferred payments schemes to provide eligible residents with the choice not to sell their homes up-front to pay for their care'.

The guidance states that the Scottish Executive expects councils to routinely inform eligible residents of their option to enter into a deferred payment agreement. It also states that although councils have discretion on prioritising applicants, that they should only exercise this discretion where it is necessary i.e. to avoid overspending their allocated funding.

The Scottish Executive has also reminded councils that individuals should still be informed of their option to enter into a deferred payment

agreement, even where the individual chooses to enter into a charging order under Health and Social Services and Social Security Adjudication (HASSASSA) 1983 (which is intended to cover situations where people are unwilling to pay an assessed contribution and where debt arises). Whilst the deferred payment still results in a 'charge' or 'standard security' against the property to enable the council to get the 'loan' for care fees back, it is not pursued as a debt under HASSASSA 1983 when you go into the care home as there is an agreement to pay the 'loan' back through the eventual sale of the property (the deferred payment).

The guidance states that councils should exercise caution in two situations:

- Firstly, where there is an outstanding mortgage they will need to make sure that the mortgage payments can be met at the same time as the care fee contributions you make from your income.
- Secondly, that councils can take the size of the weekly deferred payment into consideration before agreeing to it especially if entering into such an agreement may limit its ability to offer deferred payments to others – however this discretion to prioritise must only be used where necessary to avoid overspending their budget.

There may be a third situation where the council may decide not to provide a deferred payment, if there are joint owners of (or joint beneficial interest in) a property, and the value of the older person's

share of the property is not assessed to be enough to cover the potential life of the loan. The deferred payment agreement can only be ended by the older person deciding to end it (i.e. by selling the property and/or paying the loan back) or when the older person passes away (interest will start to accrue on the loan 56 days later). The council will have to be satisfied that there is enough capital in the property to be able to get the full 'loan' back when it is eventually sold.

The council, to protect the value of a 'standard security' may stipulate in the agreement that the property needs to be insured or that no lettings are allowed without the council's written agreement.

If the council social work department agree to a deferred payment, they will pay part of your care home fees (you will almost certainly have to contribute from your income as you would if you were council funded) whilst you are in the care home, and while you are still alive, no interest will be added to the 'loan'. Fifty-six days after the older person passes away interest at a 'reasonable rate' defined by the council will be added to the amount the council social work department have paid for your care home fees.

The council has discretion whether to defer part or all of any third-party top up payment that they have assessed as being necessary for the older person to secure the care home of their choice (see guide **53: Care Home Fees: Paying them in Scotland**). The older person can top up from their own savings, if they have a deferred payment agreement,

and the council chooses to contribute up to the standard rate, rather than the full cost of a more expensive care home that the older person has chosen.

When the property is sold, the money the council paid to the care home for the fees will need to be paid back by whoever inherits the property together with any interest (if you need debt advice contact the National Debtline, tel.: 0808 808 4000; [www.nationaldebtline.co.uk/scotland](http://www.nationaldebtline.co.uk/scotland); or contact your local Citizens Advice Scotland office - look in your phone book, or tel.: 0131 550 1000 or visit [www.cas.org.uk](http://www.cas.org.uk) to get details of your local CAB, or phone Citizens Advice Direct on tel.: 0844 848 9600 for telephone advice; [www.citizensadvisedirect.org.uk](http://www.citizensadvisedirect.org.uk).) You may cancel the deferred payment agreement at any time, but would need to find alternative ways of meeting the care home fees (for example, by selling the property).

If you are refused the option of a deferred payment, the council must put their reasons for this in writing.

If you have chosen to sign a deferred payment agreement because you do not wish to sell your property, you will not be entitled to Pension Guarantee Credit. This is because you have chosen not to access the capital in your property. The Department of Work and Pensions will see this as a form of 'deprivation' (see section 4) and the tariff income element of Pension Credit (£1 in every £500 above £10,000) will mean

that until your capital reduces you will not be eligible for the guarantee credit . For further advice, contact Counsel and Care tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.org.uk), or Citizens Advice Scotland for further advice, to find your local Citizens Advice Scotland office look in your phone book, tel.: 0131 550 1000, [www.cas.org.uk](http://www.cas.org.uk) to get details of your local CAB, or phone Citizens Advice Direct on tel.: 0844 848 9600 for telephone advice; [www.citizensadvisedirect.org.uk](http://www.citizensadvisedirect.org.uk)).

Someone receiving a deferred payment 'loan' may be restricted to receiving the Personal Expenses Allowance of £22.30 from their income. This is because the local council may take your income (including the pension credit payment being paid whilst you try to sell the property) into account. Whilst this reduces the 'loan' to be paid back from the value of the property, it may also limit the older person's disposable income in the care home.

### **3.11 Jointly owned property**

#### **3.11.1 If you are a legal owner and a beneficial owner**

The council should follow CRAG section 7 'Treatment of Property' when assessing the amount of capital you have in the form of property. You can own property as a legal owner, that is, hold property in your name. However, in order to be entitled to any profits of the sale of a property, you must also be a beneficial owner. If you are the only legal owner and the only beneficial owner, then you will be entitled to all of the profits of the property sale and the council will take the full value of the property into account in your

financial assessment (minus any selling costs up to a maximum of 10% of the value of the property and any outstanding mortgage).

### **3.11.2 If you are a legal owner but not a beneficial owner**

If you legally (either individually or jointly) hold property in your name, have not contributed money in any way toward the purchase, improvement or maintenance of the property, and are not entitled to benefit from the sale of the property, then according to CRAG, the council should not normally consider you to hold any beneficial interest in the property. If an agreement is signed by the joint legal owners at the time when the property is purchased which details the arrangement of beneficial ownership and make this clear to the Registers of Scotland Executive Agency then this should be accepted by the council as 'written evidence' of how the beneficial interest should be assessed. *However*, a previous high court decision has prompted several councils to take a different view of this situation in certain circumstances. Such circumstances include when a local council has sold a council property to their tenant (under the Right to Buy Scheme) with a discount on the market value, but someone else, perhaps a relative, paid for the property at the discounted price on the tenant's behalf.

The councils in question have, since the court decision, been treating the amount of the 'discount' given to the council tenant as equivalent to the tenant's financial contribution to the value of the property. If the council tenant needs to enter a care home he or she may be

treated as having a beneficial interest in their property, even though they did not themselves purchase the property. Please contact Counsel and Care for further advice (tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.org.uk)).

### **3.11.3 Assessing the value of beneficial interest**

If it is established that you do have a beneficial interest in a property, then the council must again follow the rules in CRAG to establish what the actual monetary value of this beneficial interest is and use this figure in your financial assessment. They should not simply assume that the value of your beneficial interest is the equivalent amount of your share of the market value of the property.

### **3.11.4 Establishing the value of your beneficial interest if you are a joint beneficial owner**

There are two main factors that CRAG explains will govern the value of your beneficial interest:

- Your ability to re-assign (sell) your share of beneficial interest to someone else; and
- There being someone willing to buy your share of beneficial interest (given the circumstances).

For example, if you and someone else hold joint beneficial interest in a property with a value of £100,000, it may appear that the value of your share of the beneficial interest would be £50,000. However, this

would only be the case if the other joint owner agrees to buy your beneficial interest for £50,000. If the other joint owner or another buyer could only afford £25,000, then the value of your beneficial interest would be £25,000. Ten percent of the costs of transferring the deeds are taken out of this figure, so in this example it would be £22,500 that the council would be able to use in their financial assessment of your beneficial interest or capital in the property, not £50,000.

It is also important for someone proposing to buy your beneficial interest to make a reasonable offer. If, for example, you were considering selling your beneficial interest to a joint owner for an unreasonably low amount, the council may consider this to be deprivation of capital.

Currently CRAG rules state that if the other joint owner(s) are not willing to buy your share of beneficial interest then it is highly unlikely that an 'outsider' will buy your share. It may mean that the value of your share of beneficial interest will be very small.

### **3.11.5 Seeking a professional valuation of your beneficial interest**

Should there be any discrepancy between what you feel is the value of your share of beneficial interest in property and what the council state is the value, CRAG recommends seeking a 'professional

valuation'. If the council arranges this, it will usually do so through their own District Surveyor's department. Therefore, you may wish to seek your own professional valuation by a qualified property surveyor. You can find a qualified property surveyor by telephoning the Royal Institute of Chartered Surveyors (tel.: 0870 333 1600: [www.rics.org](http://www.rics.org)). It is also important that this surveyor has a good understanding of how the CRAG rules state that joint beneficial interest should be valued so that this can be taken into consideration when making the decision about the value of the beneficial interest. CRAG can be downloaded from [www.sehd.scot.nhs.uk/publications/CC2009\\_02.pdf](http://www.sehd.scot.nhs.uk/publications/CC2009_02.pdf) Section 7 focuses on the treatment of property in terms of a financial assessment.

### **3.11.6 The impact of an older person not being seen to have joint beneficial interest in property**

People make arrangements for the joint purchase of property for different reasons, often a long time before they are in need of care in a care home. You may have bought a property jointly with your son or daughter so that they can use this 'investment' as a 'nest egg' for the future. However, if you need care in a care home, and do not have any beneficial interest in a property, and do not have any capital savings above £22,750, you will need to rely on the state to pay your care home fees. This will usually limit your choice of care home and will mean that you will only have your Personal Expenses

Allowance (currently £22.30) and Pension Savings Disregard (£5.75 if entitled) to live on each week in the care home.

You may, therefore, wish to think carefully before you purchase property jointly with a friend or relative or allow it to be proven that you have no beneficial interest in the property. Also, if you were considering 'signing over' any beneficial interest in property that you own in order to avoid paying any care home fees, it is worth considering that you may put your right to remain in the property at risk. This decision may also be regarded as 'deprivation of capital' by the local council involved in your placement in a care home (see section 4 of this guide and CRAG, section 6 regarding deprivation of capital for more information).

### **3.12 What happens if someone else lives in your property?**

The value of your property will not count as capital if your spouse or partner lives there, even if the house is in your name.

The value of your property is also ignored if a close relative continues to live there who is:

- Incapacitated, that is they would qualify for a disability benefit
- A child you are responsible for under the age of 16
- Aged 60 or over.

A close relative means a:

- Parent
- Son or daughter
- Step-parent, step-son or step-daughter
- Parent, son-in-law or daughter-in-law
- Brother or sister
- Grandparent
- Grandchild
- Uncle or aunt
- Nephew or niece
- Half-brother or half-sister or
- Adopted child
- or the partner of any of the above.

The local council social work department has discretion to ignore the value of your property in other circumstances, such as, for example, if you gave up your own property some time ago in order to care for someone who is now moving into a care home. However, this decision can be reviewed by the local council at any time. If the person moves out of the property or the property is sold, the value will be included in your financial assessment in the usual way.

Sometimes, the council may allow a person, such as a younger relative, to remain living in your house, but again they will seek a 'standard security' against the property so that they can recover their money when it is sold. The council cannot charge interest on this debt whilst

the resident is still alive. The council does not need your permission to place seek a 'standard security' on your property but they should write and tell you what they are going to do.

### **3.13 What happens if your property is rented out?**

If you rent out your property to tenants, the value of the property will be taken into account in a financial assessment, and, if it is valued at over £22,750 you will have to pay the care home fees yourself. It will then be necessary to arrange for the rent you charge to cover the expenses of the care home, as the local council will take into account the income you receive when it completes a financial assessment. If you have a deferred payments agreement with the local council, this rental income will be treated as weekly income and will need to be used to reduce the amount that has to be paid back. The council may refuse a 12 week disregard and a deferred payment if you are renting out your property and need to pay care home fees.

You may need to be aware that if this weekly income from renting the property is above the amount for Pension Guarantee Credit, currently £132.60 per week for a single person, that you may be liable to pay income tax on this income. HM Revenue and Customs can be contacted for further advice on this via their website:

[www.hmrc.gov.uk](http://www.hmrc.gov.uk).

### **3.14 Adapting your property to accommodate and/or care for a parent**

This is something you may want to think carefully about before deciding to go ahead. It may be that while there is good intention behind the move it could have implications, particularly where the older person is providing capital towards the adaptation – such as an annexe. If an older person has provided capital towards an adaptation, they will have beneficial interest in the property (as they contributed to the value of the property). If the older person then moves to a care home the council may see them as able to pay for their own care and if the property is not being sold a debt for care fees may accrue.

In some cases, interest will accrue either immediately or 56 days after the older person dies as in the case of a deferred payment. You may then have a situation where your property is devalued (if the annexe is seen as a separate property or if it is sold separately) and, although yet to be clarified, in a position where the interest could accrue against the entire property and you may face having to sell the property to meet the cost of the fees that have accrued and any interest attached. In some cases, the adaptations could even be classed as deprivation of capital (see section 4). You may want to seek legal advice about this from Citizens Advice Scotland (to find your nearest branch, look in your phone book, or tel.: 0131 550 1000 or visit [www.cas.org.uk](http://www.cas.org.uk) to get details of your local CAB, or phone Citizens Advice Direct on tel.: 0844 848 9600 for telephone advice;

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)) or the Legal Services Agency (tel.: 0141 353 3354 ; [www.lsa.org.uk](http://www.lsa.org.uk)).

## 4 Deprivation of capital

If you deliberately give away your property or savings in order to avoid paying for your care home costs, this is called 'deprivation of capital'. The Department for Work and Pensions and the local council are entitled to still take account of this capital as if it were still owned by you, and can seek to make you pay the care home fees accordingly.

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

- Giving away money
- Transferring the ownership of property to someone else, or
- Spending your capital on something not necessary, for example, an expensive painting.

Both the Department for Work and Pensions and the local council must look at your reasons for giving the capital away and when you gave it away. For example, if you gave each of your grandchildren some money three years before you needed care, 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 two weeks before you went into a care home the local council might decide that you did it in order to avoid having to sell it to pay the care home fees. There is no time-limit on how far back the council can look at what they consider to be 'deliberate' deprivation of capital.

## 5 Pension Credit

People who live in care homes can claim Pension Guarantee Credit if they are on a low weekly income. This will be included in the council's financial assessment and will be used to pay towards the care home fees, minus the £22.30 Personal Expenses Allowance.

If you were receiving Pension Guarantee Credit before moving into the care home, you should tell the Department for Work and Pensions and ask for a review of your entitlement. If you are one of a couple and only one of you is moving into a care home permanently you must both claim Pension Guarantee Credit as separate individuals. It is important that both you and your partner put in new claims to make sure that you are both receiving the right amount of benefit. Contact the Pension Service (tel.: 0845 60 60 265; [www.direct.gov.uk/pensions](http://www.direct.gov.uk/pensions)) for more details about what benefits you are eligible to receive. Also, see guide 2: **Pension Credit** for more information.

### 5.1 Pension 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 receive if you lived in your own home. The Savings Disregard will be paid to you up to a maximum of £5.75 a week depending on your weekly income. This is paid to you as well as your Personal Expenses Allowance of £22.30.

## 6 Attendance Allowance and Disability Living Allowance

If you are receiving financial assistance from the local council towards your personal care fees, Attendance Allowance and the care component of Disability Living Allowance will normally stop after you have been in a care home for 28 days. This rule also applies if the council is applying the 12-week disregard to your property (see section 3.8). If you do not receive any financial assistance from the council including free personal and nursing care to pay your care home fees, you are still able to claim Attendance Allowance and Disability Living Allowance.

## 7 When it is the local council's duty to pay more

The local council should tell you the amount they usually agree to pay for the level of your care in a care home. This amount may be called the standard rate or the usual rate for care. The care homes that the local council social work department usually suggest are those which are the council's 'preferred providers', those care homes which agree to make a contract with the council at their standard rate. However, as well as reflecting the local care home rates, the rate that the local council should pay towards your care home fees should be based on your individual assessed needs as stated in your care plan. (You should be given a copy of this care plan. See guide **50: Assessment and services in from your local council in Scotland** for more information about the care plan.) The guidance specifically warns local councils not to set 'arbitrary ceilings' on the amount they will agree to pay. Local councils have the discretion to increase the amount they usually pay if the care home you have chosen is the only home with a vacancy that can meet your assessed needs.

### 7.1 When it is not the local council's duty to pay more

If you prefer a more expensive home rather than the one the local council has chosen for you, that can meet your individual assessed needs, and there is someone else – a relative, friend or organisation, known as a 'third party' – willing to pay the extra cost, you are free to

move in. This 'third party' will have to sign a contract with the local council to pay the 'top-up' in the long term. This is called a third party top-up agreement. In limited cases, charities or benevolent societies may be able to help you with a shortfall; however this is becoming less common. It is important that any third party arrangements you make can continue for the whole length of time you are in the care home, as you may have to move to a cheaper home if the third party is not able to continue making this contribution.

Before someone agrees to help you with your fees by paying a third party top-up it is important that you seek advice to see if it is possible that the local council will pay more towards your fees based on consideration of your care needs. See guide **53: Care Home Fees: third party top-ups** and guide **51 – Hospital Discharge in Scotland** for more information.

## 8 Paying your own fees

In Scotland, care home residents receive payments from the local council towards the cost of the care home fees. One payment covers personal care fees, and amounts to £156 per week. If you have been assessed as needing nursing care, you will receive an additional £71 per week, so that the total contribution will be £227 per week. In order to receive these contributions from the local council, you should have an assessment of need carried out by the social work department. If you decide to receive the personal care contribution from the social work department, please note that you will no longer be eligible for Attendance Allowance at this time.

Hotel and accommodation costs are then paid by the resident, after a means test has been carried out by the local council. If you have savings or property over the value of £22,750 you will be expected to pay the rest of your weekly care home charge from these savings.

Of course, if you have sufficient resources you are free to choose a home at any price, but it is important to be aware that care home fees are expensive. If you live in a care home for a number of years your savings may soon be reduced to the upper capital limit of £22,750 (or the limit at the time as it rises every April). If you decide to do this, and not receive any financial assistance from the social work service, you can still ask them to help you find a suitable place. You can request an

assessment from a social worker who will be able to work out what your needs are, and what you need to look for in a care home placement.

In the meantime, if your funds reduce to the limit of £22,750 you will be eligible to apply for financial assistance from the local council towards the cost of your care home place. You should inform the local council as soon as your savings drop to just above this level. The council should then make necessary arrangements to continue paying your accommodation costs in this care home. They should not force you to continue using your capital below £22,750 to pay the fees, even if the fees are higher than the usual cost. However, they are within their rights to ask you to move to another cheaper care home, provided that this new home will meet all of your assessed needs.

If the home you have chosen costs more than the local council will usually pay for someone with your individual assessed needs, and the council will not agree to pay more because they have identified another cheaper suitable home with a vacancy, they may ask you to move to this less expensive home or ask you to arrange for a third party to meet the shortfall. If it is possible that you will at some point have to rely on local council help towards home fees, you may wish to try to move into a care home that will accept the local council's 'usual cost' and make sure that the local council assesses your needs and, if possible, arranges your place.

If you have capital in a property and would like advice about the best ways to invest this to pay for care home fees, you may wish to contact the Nursing Home Fees Agency (tel.: 0800 99 88 33; [www.nhfa.co.uk](http://www.nhfa.co.uk)), Saga (tel.:0800 096 8703; [www.saga.co.uk/money-shop/care-funding](http://www.saga.co.uk/money-shop/care-funding)) or Eldercare Solutions (tel.: 01707 368 945; [www.eldercare-solutions.co.uk](http://www.eldercare-solutions.co.uk)). They are able to give information about long-term insurance schemes available to help invest money for care home fees.

## **9 Temporary stays and respite care**

You might move into a care home for a short period, perhaps to give the person who cares for you a break, or you might move into a care home for a trial period whilst you decide if you want to make it your permanent home. For these temporary stays, the local council may calculate your financial contribution differently for the first eight weeks of your temporary stay. It does not have to make a full financial assessment for these eight weeks, and, instead, you will be asked to pay what the social services think is a reasonable amount. If you are not happy with the amount charged, you can ask for it to be reviewed. However, after eight weeks the local council will usually follow the same rules for assessing your contribution as they do permanent residents. The local council must ignore the value of your property if you plan to move back there.

### **9.1 Free personal and nursing care during a temporary stay**

If you are staying temporarily in a care home you should still receive the free personal and nursing care payments (mentioned in section 8), if you are eligible for them.

### **9.2 Temporary stays and your benefits**

Attendance Allowance and the Disability Living Allowance care component will normally stop after you have been living in a care

home for 28 days. If you do need to go into and out of a care home for short periods, the days for each stay will be added together if you re-enter within 28 days. If you need regular stays in a care home to give your carer regular breaks, you should discuss with a social worker how your care could best be arranged so that it does not lead to your disability benefit being stopped.

If you are receiving respite care in a care home you can continue to receive Housing Benefit, Council Tax Benefit or Pension Guarantee Credit for up to 52 weeks. If you are unsure whether you want to make a permanent move into a care home, you can continue to receive Housing Benefit, Council Tax Benefit and Pension Guarantee Credit for up to 13 weeks whilst you make this decision.

Some people go into care homes as a temporary resident and then after a few weeks decide to stay in the home permanently. The council will reassess your finances when you become a permanent resident. Any change following your re-assessment should only be applied from the time you became a permanent resident – not from the time you entered the home.

## 10 Temporarily being away from a care home

The local council is allowed to choose if it will continue to pay its contribution towards your care costs when you chose to be away from the care home. You should ask your council about what will happen if you had to leave the home temporarily, for example, if you went on holiday with your family. Your contract for care, agreed between the care home and the council if you are council funded, and between you and the care home if you are self funded, should make it clear what will happen in these circumstances.

If you are away from the care home because you have to go into hospital, you will continue to receive your usual amount of Pension Guarantee Credit from the Department for Work and Pensions.

# 11 Selecting a care home

Your assessment of need should specify which sort of care home can meet your needs. To find out which homes of this sort are available in your local area, you can contact the Scottish Commission for the Regulation of Care (SCRC) (tel.: 0845 603 0890; [www.carecommission.com](http://www.carecommission.com)), which can give detailed information about registered care homes in Scotland. The Elderly Accommodation Counsel can also give this information, searching for local homes in your area, (tel.: 0800 377 7070; [www.housingcare.org](http://www.housingcare.org)). It is always advisable to visit care homes to see what they are like, and what facilities are available. It is a good idea to think about what you would like from your care home before going to visit. More information about choosing a care home can be found in guide **19: Care Homes: what to look for**.

## Scotland's Care Champion

In October 2009, a new specialist Rehabilitation Consultant was appointed to act as a Scotland-wide care champion to help older people live better quality lives. Edith Macintosh will spend two years working with care homes and day care services to help drive up standards of care and support. In particular, the appointment (which has been funded by the Scottish Government) is expected to play a major role in helping to improve the lives of people with dementia.

The main purpose of the post is to promote and increase access to rehabilitation and enablement to make sure that older people in care homes and day services enjoy a fulfilling life. This could involve encouraging older people to exercise more or enabling them to have increased access to a range of activities within the care services or in the community.

The appointment follows the publication of the Scottish Government's Delivery Framework for Adult Rehabilitation in Scotland Document in 2007. That document examined the evidence for co-ordinated and focused approaches to rehabilitation gaps. The post is pivotal to the implementation of the National Framework for Adult Rehabilitation in terms of care homes and day services for older people.

## 11.1 Moving to a different area

When your local council has agreed to fund you in a care home, you are free to choose a home anywhere in Scotland. Your local council can also fund a care home in England and Wales through special arrangements (there is guidance available on cross-border placements, as well as general directions on choice of accommodation. For more information, contact Counsel and Care, tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.org.uk)). For example, you may wish to move to be near your family or back to the area where you were brought up. If you move across the border to England or Wales you will need to arrange for a cross-border placement with your local council social work department. If your local council is paying your fees and you move to a different area you will always be paid for by the council that originally assessed your needs, and the guidance includes information on how councils should liaise and arrange funding and reimbursement. This applies to people who are moving from England and Wales to Scotland, or from Scotland to England and Wales for which there is separate guidance. This means that if a care home resident has been assessed in Scotland, they can take their funding with them, despite the system in England being arranged on a different basis by the council in the new area funding the placement and seeking reimbursement from the original council.

The local councils involved in arranging your care have a duty to liaise with each other to arrange reimbursement for the cost of your

care. (See section 2.1 of guide **16: Care Home Fees: paying them in England** and section 2.1 of guide **72: Care Home Fees: paying them in Wales** for more information about how the NHS-funded nursing care payment operates in these countries.)

If you are moving to a more expensive area your local council should consider increasing their funding to enable you to move to a home in that area. It is reasonable to expect them to pay what the social services of the area you wish to move to usually pay for a care home. In order for them to do this it is important that your reasons for moving to another area are included in your assessment and care plan. If they are not included, you should request a review of your care needs and make sure that your need to move to a home in a new area is included in this (as an important social or emotional need, for example maintaining relationships with family and close friends).

Your local council is only obliged to pay enough to cover the cost of the care you need in the area you require. It is, therefore, important to find out the cost of care homes in that area. You could also find out how much the local council in that area pays for the places it funds. Sometimes a care home will negotiate with your local council and accept you at a lesser rate. Often care homes will charge a different rate if a person is being paid for by the local council compared with a person who is paying his or her own fees. Therefore, when you are looking for a care home place, it is important to tell the care home that your fees will be the responsibility of your local council.

## 12 NHS-funded continuing healthcare

NHS continuing healthcare is a package of care funded solely by the NHS for people whose needs meet the particular eligibility criteria set by their local NHS Board. This care could be provided in a hospital setting, in a nursing care home that is chosen by the NHS or at times in the person's own home.

NHS-funded continuing healthcare is allocated according to eligibility criteria set by individual NHS Boards, based on national guidelines. In order to identify whether you meet the criteria, a continuing healthcare assessment needs to be completed by a health professional.

If you are assessed as being eligible for NHS-funded continuing healthcare, you will not be expected to pay for any of the costs charged by the care home, either in respect of nursing or care home fees.

Please see guide **27: Continuing healthcare: should the NHS be paying for your care?** for more information about this. Please note that the new National Framework introduced in October 2007 is relevant to England only but there is a section on the national guidance in Scotland. Individual Health Boards in Scotland are for the time being setting local criteria (based solely on individual health care needs).

## **13 Contracts with a care home**

### **13.1 Local council Social Work department contracts 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 local 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 that were stated in the care plan produced by the local council social worker following your individual assessment.

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.

### **13.2 Individual contracts with the care home**

If you are funding your own placement it is very important that you have a written contract with the care home and this document sets out clearly the agreed terms and conditions.

The contract that you have with the care home should determine the following:

- The basis of your stay, for example, whether it 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
- Your rights and entitlements
- The care home 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
- What you will be charged to hold your place while you are away from the care home temporarily
- How you keep your property safe.

### What to look out for in a contract:

- If it is not made clear how much you will have to pay, how often you will have to pay and who is responsible for the payment
- 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 enter your room without your consent
- If the care home has the right to keep or dispose of your property or possessions
- If the terms are not clear about how long the fees are payable after death.

You should not 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 aspect of the contract you are being asked to sign, you could contact the Scottish Commission for the Regulation of Care (SCRC) (tel.: 0845 603 0890; [www.carecommission.com](http://www.carecommission.com)) to discuss this. You could also contact your local Trading Standards Office (their details will be available in the telephone directory or at [www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)) or Consumer Direct (tel.: 08454 04 05 06; [www.consumerdirect.gov.uk](http://www.consumerdirect.gov.uk)). An independent advocate can support you to do this (see guide **25: Independent Advocacy** for more information).

### **13.3 Arranging payment of fees**

The contract should provide details of how the fees are to be paid, although very often the local council social work department will arrange to pay a net figure to the care homes for council-funded residents. This will be the difference between the weekly fees charged by a care home and your assessed income, which will include any third party top-up agreed. But, if the care home raises its fees and the third party top-up is unable to continue, you may be asked to move to a cheaper care home. For this reason, it is important to get the care home to invoice the local council social work department for the full amount of the care home fees and to ask the local council to invoice you for your assessed contribution. That way, if there are any changes to the amount, the local council social work department should try to help resolve the problem whilst still maintaining full funding responsibility.

## 14 Challenging decisions

If you disagree with a decision made by the Department for Work and Pensions you can ask them to reconsider it – this is called a revision. If you are still unhappy with the decision you can appeal. An independent tribunal will hear your appeal. You normally have one month to challenge a decision made by the Department for Work and Pensions.

If you disagree with a decision made by your local council you can use the council's complaints procedure. Firstly, you can tell the local council that you do not agree with the decision and try to resolve the matter informally. If the complaint is not resolved, it may be necessary for you to complain in writing in accordance with the local council's complaints procedure. This formal complaints process will investigate any complaints you have about how the local council administers its policies or if their policies are not effective.

You can complain if you are unhappy with the services or assistance from the social work department, the services or assistance in a care home, or the way your financial contribution has been calculated.

Patients or their relatives, carers or advocates can appeal a clinician's decision to discharge them from hospital through the Director of Public Health. Details of how to do this should be available from

hospital staff. Individuals can also use the NHS complaints procedure or refer their case to the Scottish Public Services Ombudsman (tel.: 0800 377 7330; [www.spsso.org.uk](http://www.spsso.org.uk)). Patients with mental health difficulties (including dementia) may also be able to take the case to the Mental Welfare Commission for Scotland (tel.: 0800 389 6809; [www.mwscot.org.uk](http://www.mwscot.org.uk)). For more information, see guide **54: Complaints about community care and NHS services in Scotland.**

If you have been refused NHS continuing healthcare you can ask for a review of the decision. Please see guide **27: Continuing Healthcare: should the NHS be paying for your care?** for more details.

If you need support in order to make a complaint, you may want to contact an independent advocate (see guide **25: Independent Advocacy** for more information).

Our advice workers can advise on a wide range of issues affecting older people, their relatives and carers. Counsel and Care produce a range of guides which can be downloaded from our website [www.counselandcare.org.uk](http://www.counselandcare.org.uk), or requested by calling our guide orderline on 020 7241 8522.

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

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