



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 costly. Although some people are able to pay their own fees, many 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

If you are finding it more difficult to cope in your own home you may want to request a needs assessment from your local council social work department. For more information about the needs assessment see our guide:

**Assessment and services from your local council in Scotland** (guide number 50).

The needs assessment may identify that you need help in your own home to be able to cope. For more information about living in your own home please see our guides:

**Help at Home: what may be available in your local area** (guide number 14); and

**Housing: adapting your home to stay independent** (guide number 28). which has a section on the Scheme of Assistance in Scotland.

The assessment may identify that your care needs can best be met in 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 your assessed care needs should be written down, whether you are paying your own care home fees (you should have a copy of the needs assessment) or whether the council are contributing to the cost of the care home (you should have a copy of the needs assessment and your care plan).

Your needs assessment should also specify which sort of care home can meet your care needs. To find out which care homes may be available in your local area, you can contact Social Care and Social Work Improvement Scotland (SCSWIS) (tel.: 0845 600 9527; [www.scswis.com](http://www.scswis.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.: 020 7820 1343; [www.housingcare.org](http://www.housingcare.org)). It is always advisable to visit several 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 our guide: **Care Homes: what to look for** (guide number 19).

## 1.1 Moving to a different area

When your local council has agreed to fund you in a care home, you are free to choose a care home anywhere in Scotland. Your local council can also fund a care home in England and Wales through special arrangements with regard to cross-border placements and financial reimbursement. 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 following a needs assessment or re-assessment. You may want to ensure that your need to move to the new area is

contained in your care plan as an important social and/or psychological care need.

The two councils can then liaise and agree the process for arranging and paying for the placement. The new council will usually arrange the contract and pay the care home fees then seek reimbursement of the cost of contributing to your placement from the former council.

If your local council is already paying your fees and you move to a different area, it is the original council that will remain responsible for your care home fees, so it is important to agree any move with your council before moving. 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.

If you are moving to a more expensive area, your local council should consider increasing their funding to enable you to move to a care home in that area if this is necessary. If the care homes in the new area cost more than the care homes in the original council area, it is reasonable to expect the original council to pay the same rate as the council in the new area. 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 (see above). Also see our guides:

**Assessment and services from your local council in Scotland** (guide number 50); and

**Care Home Fees: Third party top-ups in Scotland** (guide number 53).

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

Every local council social work department must follow the guidance in the Charging for Residential Accommodation Guide (CRAG) when they work out how much you will need to pay/contribute towards the cost of your care home fees.

The council will need to know your income and the level of your savings and other capital, including any beneficial interest you may have in property (see section 3.11).

If you have savings and capital of less than £14,500, you will not be expected to use any of this money to pay for your care home fees. However, you will still have to contribute most of your weekly income (state pension, occupational pension etc) towards the fees. You will keep £22.60 a week from your income and this is your weekly Personal Expenses Allowance (PEA). You may also keep any Pension Savings Disregard you have been awarded up to £5.80 a week (see section 5.1 of this guide).

If your savings and capital are between £14,500 and £23,500, the council will contribute toward your care home fees, but you will have to pay a weekly charge known as 'tariff income' (see section 3.7 of this guide) from your savings in addition to the contribution from your income.

If you have savings and capital over £23,500, you will be responsible for paying all of your care home fees (minus any entitlement you may have to free personal and/or nursing care) until your capital reduces to this upper capital limit.

If your capital is less than £23,500, but your weekly income is more than the cost of your care home fees and the Personal Expenses Allowance added together, you will be responsible for the full cost of your care home fees.

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

In Scotland, if you have assessed care needs that meet the definition of personal care and which need to be met in a care home, your local council will pay £159 per week for your personal care. If you need personal and nursing care, you will receive a contribution of £231 per week for your care (the nursing care contribution is £72 per week). You may be expected to contribute to, or pay in full, the rest of the costs of the care home, which will be the accommodation/hotel costs. In order to work out whether you can afford to pay the accommodation/ hotel costs, you will need to have a financial assessment carried out by your local social work department following your needs assessment.

## **2.2 When are you eligible for free personal and nursing care?**

There is case law which dictates that you are only eligible for free personal and nursing care payments once you have been assessed by

the local social work department as requiring this care and, only when the council has actually contracted with the care home. Therefore, if you arrange your own placement in a care home or move there before a contract is agreed, you may be responsible for the full cost of any fees prior to the completion of an assessment and a contract agreement between the council and the care home.

There are several contract routes for accessing free personal and nursing care in a care home. For people assessed as needing to move to a care home and who are eligible for council help to pay the fees, there is the mutual route, where you contract with the care home to pay the hotel/accommodation costs and the council contracts with the care home for the free personal and nursing care element of the fees. Alternatively, there is the integrated route, where the council negotiates the full cost of the care home fees and makes a contract with the care home to cover all of the care and hotel costs - you pay your assessed contribution directly to the council.

### 3 The local council financial assessment

If you receive financial assistance from your local council towards the cost of your care home fees (you have eligible care needs and have capital under £23,500), you have to contribute most of your income, towards the fees. Some types of income are not included in the council calculation. These include:

- War Pension Scheme mobility supplement
- War Widows Special Allowance/War Widows Special Payments
- Some charitable payments
- Pension Savings Disregard

The Government is currently reviewing whether care home residents will retain eligibility to the mobility component of Disabled Living Allowance however any changes will not come into force until October 2012.

If you receive financial assistance towards your care home fees from your local council (including free personal care), your Attendance Allowance or Disability Living Allowance care component will stop after you have been in the care home for 28 days. This is also the case if your care home fees are being met by NHS Continuing Healthcare funding. If Continuing Healthcare is provided at home, (which would be the exception rather than the norm) you will be able to retain these benefits.

For more information, see our guide:

### **Continuing Healthcare: Should the NHS be paying for your care?**

(guide number 27).

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

You are assessed on an individual basis, regardless of your marital status for the purpose of establishing care home fee contributions. 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 remaining at home to pay 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 at home give details about his or her income and savings and should not ask about this on the financial assessment form.

If one spouse 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 3.11.

The local council will have a standard rate which they set as the amount they will usually pay for a care home placement if you have capital under £23,500. If the council (or 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 (such as your spouse, partner, family member or friend) can choose to pay the difference, known as a 'top up fee' so you can stay in the more expensive care home. The council can only ask for a third party top up if a cheaper care home that meets all of your assessed care needs is also available at that time but you choose the more expensive one. For more information about top-up fees, see our guide: **Care home fees: third party top-ups in Scotland** (guide number 53).

### **3.2 When you and your spouse or partner 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 have savings of up to £23,500 each and the local council will have responsibility for contributing towards the cost of the fees. You will contribute an assessed amount from your weekly 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 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.

If you and your spouse or partner move into the same care home and have separate living arrangements, you can still be treated by the Department for Work and Pensions ([www.dwp.gov.uk](http://www.dwp.gov.uk)) as having separate finances if you claim Pension Guarantee Credit. You may want to claim Pension Credit separately, although any Pension Credit that you receive will be included as part of your weekly income and your contribution towards the cost of your care home fees if you receive council funding. If you both move to a care home and the Department for Work and Pensions treat you and your partner as a couple for Pension Guarantee Credit you should contact our advice service (tel.: 0845 300 76 85) or your local Citizens Advice Scotland office ([www.cas.org.uk](http://www.cas.org.uk)) for further advice.

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

You will keep a Personal Expenses Allowance (PEA) of £22.60 per week from your weekly income. This should be disregarded from the income taken into account in your financial assessment if you are part-funded by the council.

The council has discretion to allow you to keep more than £22.60 per week PEA. 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 PEA increased to help support your spouse or partner who remains at home, for instance, if they are living on a low income, or if they need help with the cost of visiting you – there is no

definition of the circumstances that will result in an increase of the PEA.

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

During your financial assessment, the council must disregard 50% of your occupational pension as long as you use the whole of that half to support your spouse or civil partner at home. The same rule applies if you receive income from a personal pension or retirement annuity.

This rule applies to married couples/civil partners. Where this is not the case, and 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 Capital in bonds**

Currently when your local council assesses your finances, they are allowed to take into account the value (surrender or market value) of any capital you have in bonds, unless they have a life assurance element attached to them. Income from bonds, with or without a life assurance element, will still be taken into account. Any periodic payment of capital from a bond will usually also be taken into account as income for the period of that payment.

### **3.6 Tariff income**

Any actual income you receive from capital, such as interest on savings, is not counted as 'income' but is added to and treated as capital.

You will be assumed to have £1 a week extra income for every £250 or part of £250 you have between £14,500 and £23,500 in savings. This tariff income will be added to the assessed contribution from your weekly income. For example:

- Mr Wilson receives a state pension and Pension Guarantee Credit totalling £137.35 per week income. He also has savings of £15,200. His assessed contribution from his income would be £114.75 (£137.35 minus a PEA of £22.60). He would also contribute tariff income from his savings of £3 per week at that point (£1 for every £250 or part of above £14,500).
- Mr Wilson will therefore contribute (from his income and tariff income) a total of £117.75 (£114.75 + £3) per week towards his care home fees.

The amount of tariff income reduces as your savings reduce towards £14,500. When you reach this lower capital limit (reviewed every April) you no longer have to pay a tariff income but you will still pay an assessed contribution from your income.

### **3.7 12-week property disregard**

If you have less than £23,500 in savings and you are moving to/have moved to a care home, for the first 12 weeks from the date that your stay has been agreed as permanent under Part III National Assistance Act 1948, the council must ignore the value of your property if you

own it. Part III means that you have been assessed by the council as needing a permanent care home placement. This means that if you have a property but limited savings and need to move into a care home, you may be eligible for help with your care home fees for the first 12 weeks. It also means that if you moved into a care home privately and your savings have reduced to £23,500, but you have not sold your property, you may also still be eligible for help for 12 weeks while your property is disregarded if the council was not involved in arranging your care home placement when you moved there. This is called the 12-week property disregard. This means that the council must contract with the care home for those 12 weeks and pay your full fees, and invoice you for your assessed financial contribution from income (plus tariff income, if relevant). The council may only pay up to their standard rate for a care home placement if you choose a more expensive care home when a cheaper home that meets your care needs is available. You are allowed to pay your own third party top up whilst a 12 week property disregard is in place, or a relative can pay this. If your property is sold before the 12-week period ends, then the disregard ceases. 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 self-funded.

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

If your home is for sale to pay for your care but it is still not sold after 12 weeks, the council may 'loan' you the money to meet the cost of your care home fees if you have other capital of less than £23,500. This

is sometimes referred to as 'interim funding' and should be interest free. This financial assistance will stop if you sell your property. You will have to pay back the loan to the council when your 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.

### **3.9 Delaying the sale of your property**

If you have less than £14,500 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 within 12 weeks), you can request a long-term loan, known as a deferred payment agreement, from the council.

Circular CCD13/2004 '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'.

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. 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, they should only exercise this discretion where it is necessary i.e. to avoid overspending their allocated funding.

It is not certain that, in some circumstances, you will be provided with a deferred payment – for example:

- Where there is an outstanding mortgage, can these payments be met at the same time as the financial contribution to your fees from your income?
- If the size of the deferred payment contribution the council is asked to make may prevent other people from accessing the scheme (in relation to the council's total budget for this scheme)
- If the value of your property (or share in the property) is unlikely to cover the total cost to the council of contributing to your care fees until the agreement ends

The council, if it agrees to a deferred payment, 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. No interest is charged on the 'loan' until 56 days after you pass away. You can end the agreement by selling your property and paying back the 'loan' at any time.

As with a 12 week property disregard, the council may only contribute up to the standard rate and a top up may be required if you wish to go to a more expensive care home. As with a 12 week disregard, a care

home resident can pay their own top up if they have a deferred payment or a third party such as a relative can.

If your council refuses to financially assist you under a deferred payment agreement, they should state the reason for refusal in writing.

### **3.10 Jointly owned property**

#### **3.10.1 Legal owner and 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 capital from 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 capital from 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).

#### **3.10.2 Legal owner or 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, 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 makes 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 high court decision 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 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 (their beneficial interest).

### **3.10.3 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 your 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.

### 3.10.4 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 your share of beneficial interest to someone else; and
- There being someone willing to buy your share of beneficial interest (a market or willing buyer for that interest).

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, or someone else, 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. It is the interest that has to be valued, not the property. Up to 10% 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 take into account from the property in your financial assessment.

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 (i.e. a family member) for an unreasonably low amount, the council may consider this to be 'deprivation of capital'.

Currently CRAG states that if the other joint owner(s) are not willing to buy your share of beneficial interest:

‘then 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’.

Should there be any discrepancy between what you feel is the value of your share of beneficial interest in property and what the council states 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 or through a contracted company. 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)). From experience, it seems that even a professional surveyor may be reluctant to place a value on beneficial interest, as it can be a complex and in some ways ‘intangible’ equation. It is important that any surveyor attempting to value beneficial interest 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.

Beneficial interest can be a highly complex and contentious area of the financial assessment, so you may want to contact our advice service (tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.org.uk)) and/or seek legal advice via the Legal Services Agency (tel.: 0131 228 9993; [www.lsa.org.uk](http://www.lsa.org.uk)) if there is a dispute about the value of your beneficial interest for the financial assessment.

### **3.10.5 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 residential care. 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 £23,500, you will need to rely on the state to pay your care home fees. This will usually limit your choice of care homes and may mean that you will only have your Personal Expenses Allowance of £22.60 (and, if entitled, a Pension Savings Disregard of £5.80 as disposable income each week in the care home.

You may, therefore, wish to think carefully before you purchase property jointly with a friend or relative or agree to forgo/sign over beneficial interest in the property. Transferring your interest in property may be regarded as 'deprivation of capital' by the local council involved in your placement in a care home, depending on

the circumstances involved, timing and perceived or actual intention (see section 4 of this guide and CRAG, section 6 regarding deprivation of capital for more information).

### **3.11 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 or family member continues to live there who is:

- Incapacitated (they receive or 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 (including an adoptive parent)
- B. parent-in-law
- C. son (including adoptive son)
- D. son-in-law
- E. daughter (including adoptive daughter)
- F. daughter-in-law
- G. step-parent
- H. step-son
- I. step-daughter

J. brother

K. sister

L. grandparent

M. grandchild

N. uncle

O. aunt

P. nephew

Q. niece

R. the spouse, civil partner or unmarried partner of any of A to K inclusive.

The term 'family' includes any of the following:

**A** a married or unmarried couple, a civil partnership and any person who is

- a member of the same household and
- the responsibility of either or both members of the couple or

**B** a person who is not a member of a married or unmarried couple or civil partnership and who is

- a member of the same household, and
- the responsibility of the resident.

The local council social work department has discretion to ignore the value of your property in other circumstances, such as, for example, if your child or a friend gave up their own property some time ago in order to move into your home and care for you but you are now having to move 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 until 56 days after the resident passes away. The council does not need your permission to seek a 'standard security' on your property but they should write and tell you what they are going to do.

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

If you rent out your property to tenants, you may be seen as a self-funded resident, as the value of the property will be taken into account in a financial assessment, unless it falls within one of the property disregards, and, if it is valued at over £23,500, you will have to pay the care home fees yourself.

If the rental income does not cover the cost of your care home fees, you can request a deferred payment agreement from the council.

As part of a deferred payments agreement with the local council, your 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 guidance does not seem to prevent councils from refusing a 12 week disregard or deferred payment agreement if the property is rented out. Different councils appear to take different views on this 'grey' area of the guidance. You may need to speak to the local council if you are refused access to this funding support in these circumstances.

You may need to be aware that by choosing to let out your property rather than sell it, the value of the property will be taken into account within your assessment for Pension Guarantee Credit and may prevent you from being eligible for it. Also, the rental income will be included as part of your annual income and you may be liable to pay income tax on this income. HM Revenue and Customs ([www.hmrc.gov.uk](http://www.hmrc.gov.uk)) can be contacted for further advice on this.

### **3.13 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 to adapt your property, it could have implications, particularly where the older person is providing capital towards the adaptation – such as an annexe. In such a case, the older person may be seen to have a beneficial interest in the property (they contributed to the value of the

property) and CRAG would need to be followed regarding valuing the older person's interest in the property (see section 3.10). If the older person then moves to a care home, there may be implications for how councils treat this interest, depending on when and why the move took place. In some cases, deprivation of capital could be an issue (see section 4). You may want to seek more advice about this from an advice agency, such as Counsel and Care (tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.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 take account of this capital as if it were still owned by you (notional capital), and can seek to make you pay the care home fees accordingly. Deprivation of capital can also affect benefit entitlement.

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 a few years before you needed any 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.

According to CRAG, avoiding accommodation charges does not have to be the only motive for a transfer of capital in order for it to be deliberate deprivation. It must, however, be a significant one. The important factors are the 'timing' of the disposal, the 'reasons' for the transfer of any capital and the perceived or actual 'intention' behind the transfer. Any decision by the council that it is/was 'deprivation of capital' has to be a 'reasonable' decision based on the information available to them. If you feel it is not a 'reasonable' decision then you may want to make a complaint, see our guide:

**Complaints about community care and NHS services in Scotland** (guide number 54).

If you are found to have deliberately deprived yourself of capital, you will be treated as having 'notional capital'. If the notional capital added to your actual capital totals more than £23,500, the local authority may assess you as being able to meet the full cost of your care, even though your actual capital is less than the upper limit.

Deprivation of capital, if it involves transferring capital, such as property, can have implications for you and for the person who received that capital. For more information see our factsheet: **Assets: Disadvantages of giving your capital away** (factsheet 1).

## 5 Pension Credit

If you live in a care home, you may be able to claim Pension Guarantee Credit if you are on a low weekly income. This will be included in the council's financial assessment and will be used to pay towards your care home fees, minus the £22.60 Personal Expenses Allowance.

If you were receiving Pension Guarantee Credit before moving into the care home, you should inform 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 may both need to 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. For more information see our guide:

**Pension Credit** (guide number 2).

### 5.1 Pension Savings Disregard

A 'Savings Disregard' assessment is carried out by the council as part of your financial assessment if you are aged 65 and over and 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 £5.80 a week, depending on your weekly income. This is paid to you as well as your Personal Expenses Allowance of £22.60.

## 6 Attendance Allowance and Disability Living Allowance

If you are receiving financial assistance from the local council towards your care home fees, including 'free' personal care, any entitlement you have to Attendance Allowance or 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, as you will effectively be 'council funded' for those 12 weeks. 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.

The Government is currently reviewing whether care home residents should receive the mobility element of Disability Living Allowance, but if changes are to be made, they will not come into force until October 2012.

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

The 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 cost. The care homes that the 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, you should not be limited to care homes that hold such contracts with the funding council. As well as reflecting the local care home rates, the rate that the local council should pay for 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. For more information about care plans, see our guide:

**Assessment and services in from your local council in Scotland** (guide number 50).

The guidance, Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993, specifically warns local councils not to set 'arbitrary ceilings' on the amount they will agree to pay. Local councils have the discretion to, and should, 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 and costs more than the standard rate.

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

The council has a duty to meet assessed care needs, not preferences. If you prefer a more expensive home rather than the home the council has chosen for you, which is available and can meet your individual assessed needs, then a 'third party', such as a relative or friend, can choose to pay the difference to keep you in the more expensive home. This 'third party' may be asked to sign a contract with the local council to pay the 'top-up' in the long term. In some cases, charities or benevolent societies may be able to help you with a shortfall if a relative is unable to pay a third party top up.

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 and the relevant circumstances. For more information see our guide:

**Care Home Fees: third party top-ups in Scotland (guide number 53).**

## 8 Paying your own fees

In Scotland, care home residents receive payments from the local council towards the cost of their care home fees. One payment covers personal care fees, and amounts to £159 per week. If you have been assessed as needing nursing care, you will receive an additional £72 per week, so that the total contribution will be £231 per week. In order to receive these contributions, you must have had a needs assessment carried out by the social work department and the council must have agreed a contract with the care home (see Section 2.1 and 2.2 above). If you decide to receive the personal care contribution towards your care home fees, please note that you will not be eligible for Attendance Allowance or Disability Living Allowance (care component) after 28 days.

'Free' personal and nursing care has been contentious because it is effectively free if you are self-funding your care. That is that your contribution to your care fees will be reduced by the amount awarded in free personal and nursing care payments. However, if you are later part-funded by the council, the payments may not make much (if any) financial difference to you. Your income/capital will still be assessed by the council for a financial contribution to the other costs of your care (hotel/accommodation costs) and in many cases the resident will still have to contribute the majority of their income towards the cost of the care just as they would if they did not receive 'free' personal and nursing care payments.

If you have savings or property over the value of £23,500, you will be expected to pay the rest of your weekly care home charge (hotel and accommodation costs) until your savings/capital reach the upper capital limit (reviewed every April). It is advisable to inform the local council as soon as your savings are within two to three months of reaching the upper capital threshold. The council should then make the necessary arrangements to provide a needs re-assessment and contribute to the costs if you have eligible care needs as soon as practicable.

You should not have to continue using your capital below £23,500 to pay your care home fees if you have eligible care needs. If this happens, contact our advice service (tel.: 0845 300 7585; [www.counselandcare.org.uk](http://www.counselandcare.org.uk)) to discuss the possibility of seeking a reimbursement of any 'disregarded capital' you have had to use to meet the cost of the placement, after having sought a needs assessment or re-assessment from the council as you approached the upper capital limit.

If the care home you are in (or have chosen) at the time your capital reduces to the upper capital threshold, costs more than the local council will usually pay for someone with your individual assessed needs, a third party may need to pay a top up fee to keep you there. For more information about top up fees, see our guide: **Care home fees: third party top ups in Scotland** (guide number 53)

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 following organisations: Eldercare Solutions (tel. 01707 368 945; [www.eldercare-solutions.co.uk](http://www.eldercare-solutions.co.uk)) Paying for Care ([www.payingforcare.co.uk](http://www.payingforcare.co.uk)) or Saga (tel. 0800 056 8153; [www.saga.co.uk/money-shop/care-funding](http://www.saga.co.uk/money-shop/care-funding)).

Please note we are unable to recommend any financial advisor and would suggest you shop around to be sure you are getting the best deal available for you and that the information given is correct.

## **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. The council does not have to make a full financial assessment for these 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 it to be reviewed. After eight weeks, the local council will follow the same rules for assessing your contribution as they do for permanent residents but must ignore the value of your property and any financial commitments, such as mortgage payments and household bills, that you might need to continue paying, 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 (see section 8 of this guide), 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 in a care home for 28 days. If you need to go in and out of a care home for short periods,

there is a 'linking rule', meaning that the days for each stay will be added together if you re-enter the home 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 temporary care in a care home, you can continue to receive Housing Benefit, Council Tax Benefit or Pension Guarantee Credit for up to 52 weeks (possibly longer for Housing Benefit if your stay is unlikely to be substantially more than 52 weeks). A temporary care home placement is defined as one where you believe that you will return to your own home in the future.

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 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

You should ask the care home manager and/or your local council social work department about what would happen if you had to 'leave' the care home temporarily, for example, to go on holiday with your family or to go into hospital. Your contract for care, agreed between the care home and the council and/or between you and the care home (depending on the contract route chosen for 'free' personal and/or nursing care), 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.

There is specific guidance on how long the council will make 'free' personal and nursing care payments on your behalf to the care home if you are 'absent' from the care home – the payments will stop 14 days after you leave the care home. Please contact our advice service on (tel.: 0845 300 7585; [advice@counselandcare.org.uk](mailto:advice@counselandcare.org.uk)) for more information.

## 11 NHS Continuing Healthcare

NHS Continuing Healthcare is a package of care funded solely by the NHS for people whose needs meet the national eligibility criteria. This care is usually provided in hospital but can be provided elsewhere, for example, in a care home.

NHS Continuing Healthcare is allocated according to eligibility criteria set out in national guidance CEL (2008) 6. In order to identify whether you meet the criteria, a continuing healthcare assessment has to be completed by a health professional, using the single shared assessment framework used for needs assessments (although there appears to be a commitment to develop a 'decision support tool' as is the case in England). If you are assessed as being eligible for NHS Continuing Healthcare, you will not be expected to pay for any of the costs charged by the care home, either in respect of the nursing or care home fees.

For more information, see the Scottish section of our guide:

**Continuing Healthcare: should the NHS be paying for your care?**  
(guide number 27).

Please note that the National Framework mentioned in guide 27 is relevant to England only.

## 12 Contracts with a care home

### 12.1 Local council social work department contracts with care homes

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 if you receive 'free' personal and nursing care and choose the integrated route. You should be invoiced by the council for your assessed contribution. 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.

If you choose the mutual route for contracts in relation to 'free' personal and nursing care (more likely when someone is self-funded with capital above £23,500), there will be two contracts, one of which is between you and the care home for hotel or accommodation costs.

The care home's fees should cover all of your care needs but you should check if you have to pay any extra charges for things such as outings, hairdressing and leisure activities.

## 12.2 Individual contracts with the care home

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

'National Care Standards – Care Homes for Older People', available at [www.scotland.gov.uk/Resource/Doc/205928/0054733.pdf](http://www.scotland.gov.uk/Resource/Doc/205928/0054733.pdf) is guidance that applies to all care homes registered with the SCSWIS in Scotland. It states that in relation to care home legal rights:

'You [should] have full information on your legal position about your occupancy rights in the care home...You [should] receive a written agreement which clearly defines the service that will be provided. It sets out the terms and conditions of accommodation and residence, including your rights to live in the home, payment arrangements, and arrangements for changing or ending the contract. Your written agreement will also include an Annex which sets out all the options available should you or your representative wish to raise any concerns or make a complaint. You have a copy of this written agreement in a format you can understand'.

If you have any questions about your contract, you can discuss this with the council/care home manager in the first instance or SCSWIS (tel.: 0845 600 9527; [www.scswis.com](http://www.scswis.com)).

## 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 are able to enter your room without your consent
- If the care home has the right to keep or dispose of your property or possessions
- If the amount of notice required to end the placement (by the care home or yourself) is not clear
- 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 SCSWIS (tel.: 0845 600 9527; [www.scswis.com](http://www.scswis.com)) to discuss this. You could also contact Consumer Direct (tel.: 08454 050607) or your local Citizens Advice Scotland office ([www.cas.org.uk](http://www.cas.org.uk)) . An independent advocate may also be able to support you with this issue, see our guide: **Independent Advocacy** (guide number 25).

### 12.3 Arranging payment of fees

The contract (or each contract if you choose the mutual route for ‘free’ personal and nursing care) should provide details of how the fees are to be paid, although very often the social work department will arrange to pay a net figure (for the integrated route) to the care homes for council-funded residents. This will be the difference between the weekly fees charged by the care home and your assessed income, which will include any third party top-up agreed. 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 (if you choose the integrated route for ‘free’ personal and nursing care) and to ask the local council to invoice you for your assessed contribution. That way, if there are any problems meeting the cost of the fees, the local council social work department should try to help resolve the problem, whilst still maintaining full funding responsibility in the interim.

## 13 Challenging decisions

If you disagree with a decision or you are unhappy with the service provided by the social work department or the care home (if it is part-funded by the council) you can use the council's complaints procedure to make a complaint. Firstly, you can raise the issue with the local council or care home and try to resolve the matter informally. If the complaint is not resolved, it may be necessary for you to make a formal complaint in accordance with the local council's complaints procedure.

If you are funding your own care home placement (beyond the 'free' personal and nursing care payment) and you have a complaint, as well as raising it informally or formally with the care home, you can also make a complaint to Social Care and Social Work Improvement Scotland (tel.:0845 600 9527; [www.scswis.com](http://www.scswis.com)) who took over the regulation and inspection of registered care services, including care homes from the Care Commission in April 2011. This has meant that there will now be:

- A national registration team
- A national complaints team
- Unannounced care inspections as the norm
- A new validation process for care providers' self-evaluations

If you have exhausted the council or NHS complaints process and are still unhappy with the outcome, you may need to contact the

Scottish Public Services Ombudsman (tel.: 0800 377 7330; [www.spsso.org.uk](http://www.spsso.org.uk)). The Ombudsman may be able to consider your complaint, depending on the circumstances.

For more information about making a complaint about your local council or care home, see our guide:

**Complaints about community care and NHS services in Scotland**  
(guide number 54).

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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