



counsel + care 
for older people, their families and carers

guide

Information from Counsel and Care: 16

Care Home Fees: paying them in England

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 England, whether they are able, or unable to pay their own fees.

Counsel and Care is the national charity working with older people, their families and carers to get the best care and support. If you have found our service helpful, please consider making a donation or leaving a legacy in your Will. You can arrange either by telephoning 020 7241 8555 or using the secure service on our website www.counselandcare.org.uk.



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Your donations, legacies and payroll giving enable Counsel and Care to get the best care and support for older people, their families and carers

Counsel and Care is a national charity; but 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 mostly to England although there may be similarities with Scotland, Wales and Northern Ireland.

We also publish five separate guides for Scotland and Wales, covering the community care assessment of need process; paying care home fees and making a complaint. These are the key areas where the policy and legislation differ significantly to England. All of the guides we publish can be downloaded from www.counselandcare.org.uk/helping-you/guides or posted to you by calling our guide orderline on 020 7241 8522.

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1 Moving into a care home

As you get older, you may find it more difficult to cope in your own home. Your local council's social services department can give you an assessment of your needs, which will show how you can overcome any difficulties you are experiencing at home. (For more information about this needs assessment, please see guide **12: Assessment and services from your local council in England**. If you live in Scotland, see guide **50: Assessment and services from your local council in Scotland** and, if you live in Wales, see guide **70: Assessment and services from your local council in Wales**.) The assessment of need may show that you either need people to come in and help you in your own home or that you need changes or adaptations made to your home to help you 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**, and **29: Housing: how to pay for the maintenance of your home**.)

The assessment may identify that the only way to meet your needs is to move into a care home. If the assessment says that you **need** to move into a care home because it is too dangerous for you to stay in your own home, this should be written down, whether you are paying for your own care home fees or whether the council are responsible for paying for your placement.

2 Paying the cost of living in a care home

Every local council's social services department must follow the Government's 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. Before they do this the council needs to find out how much you can afford to pay towards your care home fees, so they will ask you to complete and sign a financial assessment form. If you refuse to complete the form, the council may charge you the full cost of the care home fees, but they cannot refuse to provide the care if it is assessed that you need this care.

The council will need to know how much money you have in capital and savings, as well as your weekly income (including your beneficial interest in property). If you have savings and capital of less than £14,000, you will not have 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 £21.90 a week, which you can keep to spend on personal items. This amount is called your **Personal Expenses Allowance**. You may also keep any Pension Savings Disregard you have been awarded up to £5.65 a week (see section 5.1).

If your savings and capital are worth between £14,000 and £23,000, the council will contribute toward the fees of the care home, but you

will have to pay a charge known as 'tariff income' from your savings. You will still have to contribute all of your income (with a few exceptions) apart from your Personal Expenses Allowance and any Pension Savings Disregard.

If you have savings and capital worth over £23,000, you will have to pay all of the fees of the care home until your money reduces to this limit. If your capital is less than £23,000, 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.

There are agencies which can give advice free of charge about the options for paying care home fees, and explain about different ways of investing money to pay for care home fees. See section 8.1 of this guide for further details.

2.1 What happens if you have nursing care needs?

If you have been assessed as having needs that should be met in a nursing care home, you will be eligible for the nursing element of your care in the home to be paid for by the NHS. A registered nurse, either at your care home or appointed by the Primary Care Trust, will conduct an assessment of your nursing needs. If a social worker or care manager is involved in your care arrangements, they should arrange for an assessment for nursing care to be carried out before you move into a care home. If you are assessed as eligible by the registered

nurse, you will receive a standard rate of £106.30 per week from the NHS to pay for your nursing care.

Prior to October 2007, there were three nursing care bands of low, medium and high, where care home residents received financial payments from the NHS per week depending on the level of their needs. Now, those residents who were previously on the low or medium band will have been moved onto a flat rate payment of £106.30 per week. Those on the higher band (now £146.30 per week) will remain on this until they are re-assessed, where depending on the outcome, they may either receive NHS continuing healthcare if their needs have increased (see next paragraph for more details), receive the flat rate if their needs have reduced, or remain in the higher band if their needs fall between these two levels.

The nursing care payment is paid directly to the care home. If you receive funding from the local council social services, the nursing care payment will be deducted from the amount the council contribute and will not reduce your assessed financial contribution or any third party contribution.

Reviews of your nursing care needs should take place within three months of first entering a care home and then on an annual basis.

If you have nursing needs that require 24-hour continuous nursing care, you may be entitled to full NHS funding for your care home fees.

This is called NHS continuing healthcare and there is one national criteria for eligibility for this type of funding which all Primary Care Trusts must follow. For more information, see section 12 of this guide, **guide 27: Continuing Healthcare – should the NHS be paying for your care?** and **guide 40: NHS continuing healthcare: Understanding the assessment process.**

3 The council financial assessment

In most cases, if you are entitled to financial assistance from the local council towards the cost of the care home fees, you have to use all of your income, including Pension Guarantee Credit if you receive it, as a contribution towards the fees. However, 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 28 days. **If you are paying your own care home fees, you are entitled to continue receiving these disability benefits in the care home.**

You will be allowed to keep a Personal Expenses Allowance of £21.90 per week, which you can spend as you wish.

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

You should be financially assessed as an individual for the purpose of establishing care home fee contributions if you move into a care home permanently. The council **does not have the right to make your spouse, civil partner or partner give details about his or her income and savings.**

The council **used** to be able in law to ask your spouse or civil partner (but not an unmarried partner) to pay some money towards the cost of your care home fees if they believed that your spouse could afford to do so. This was called a 'liable relative' payment. Same-sex couples who did not form a civil partnership were treated in the same way as unmarried couples. This law was repealed in 2008 with the section 147 of the Health and Social Care Act, so if your spouse, civil partner or partner is paying towards the cost of your care as a 'liable relative' you should contact an advice service, such as Counsel and Care (tel. 0845 300 7585; www.counselandcare.org.uk).

3.2 When you and your spouse, civil partner or partner move into a care home

If you and your spouse, civil partner or partner moves into a care home(s) your local council will assess you as separate individuals with separate finances. This means you can have savings of £23,000 each. Where both you and your spouse or civil partner have less than

£23,000 each, the local council will have responsibility for payment of your care home fees, 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 as your spouse, civil partner or partner 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 spouse, civil partner or partner as a couple for Pension Guarantee Credit you may wish to contact an advice service, such as Counsel and Care (tel. 0845 300 7585; www.counselandcare.org.uk) for further advice.

3.3 The Personal Expenses Allowance

You will be allowed to keep a Personal Expenses Allowance of £21.90 per week from your income which you can spend as you wish. The council has the discretion to allow you to keep more than £21.90. 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 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 50 per cent 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, or if you have formed a civil partnership 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 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, civil partner 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 funds you have held in bonds, even if it has a life assurance element attached to it.

3.7 Insurance policies

Any form of income from an insurance policy is generally taken into account in full. The only exception is income from a mortgage protection policy.

3.8 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. For savings between £14,000 and £23,000, with every £250 or part of £250 you have, you will be assumed to have a £1 a week 'tariff' income. This amount will be added to the assessment of your weekly income. Therefore, you will need to take this weekly amount toward your fees from your capital savings.

3.9 12-week disregard

If you move into a care home permanently (i.e. not a trial period), own your own property and have less than £23,000 in savings, the council must ignore the value of your property for the first 12 weeks of your stay.

OR

If you are living in a care home permanently (i.e. not a trial period), own your own property, and have more than £23,000 in savings, when your savings run down to less than £23,000, the council must ignore the value of your property for 12 weeks after the savings run down to less than £23,000.

This is called the 12-week disregard. This means that the council must contract with the care home to pay your full fees, and invoice you for your assessed financial contribution. If your property is sold before the 12-week disregard period then the disregard ceases. After 12 weeks, the value of your property will be counted as part of your capital. The 12-week disregard for local councils is mandatory. If you do not receive this, the council could be liable to reimburse you for any additional costs.

3.10 A council loan while your property is being sold

While your home is for sale, the council can 'loan' you the fees of the care home. This is sometimes referred to as 'interim funding'. This financial assistance will stop if the money made from the sale of your property is over £23,000 (minus any selling costs up to a maximum of 10% of the value of the property and any outstanding mortgage). You will usually be expected to sign an agreement known as a deferred payment, see section 3.11. You will have to pay back to the council the money it has paid towards your fees while you waited for your house to be sold. If your property is in the process of being sold, you will still be able to claim your entitlement to Pension Guarantee Credit.

Please contact an advice service, such as Counsel and Care (tel. 0845 300 7585; www.counselandcare.org.uk) if you would like further advice on this issue.

The council will usually place a legal charge 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 can contact our advice service (see above) for further information and support.

3.11 Delaying the sale of your property (deferred payments)

If you have less than £23,000 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, you can also request a long-term loan known as a deferred payments scheme agreement.

If the local council social services agree to the scheme, they will pay your care home fees 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 you die, interest at the rate of inflation will be added to the amount the council Social Services have paid for your care home fees.

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. You may cancel the deferred payments agreement at any time, but would need to find alternative ways of meeting the care home fees.

If you are refused the option of deferred payments, the council must put their reasons in writing and give you the opportunity to make a complaint. The LAC 2009/3 confirms that it is unlawful for councils to operate a blanket policy on the grounds of (e.g.) insufficient council funds, and that each case must be looked at individually.

If you have chosen to sign a deferred payments 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. It is advised that you seek independent financial and or legal advice to consider whether the scheme is the best option for you. The Department of Work and Pensions will see this as a form of 'deprivation' (see section 4). Contact Counsel and Care for further advice (tel. 0845 300 7585; www.counselandcare.org.uk).

3.12 Jointly-owned property

3.12.1 If you are a legal owner and a beneficial owner

The council should follow the Charging for Residential Accommodation Guide (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, you have your name on the title deeds. 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.

3.12.2 If you are a legal owner but not a beneficial owner

If you legally (either individually or jointly) hold property in your name, but have not contributed money in any way toward the purchase, improvement or maintenance 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 H.M. Land Registry (in England and Wales, Registers of Scotland in Scotland), 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 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 behalf of the tenant. 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).

3.12.3 Assessing the value of beneficial interest

If it is established that you do have a beneficial interest in a property, then the council should 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. The guidance implies that they should not assume that the value of your beneficial interest is the equivalent amount of your share of the market value of the property.

3.12.4 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. Up to ten per cent of the costs of transferring the deeds can also be deducted to assess the value of the beneficial interest you hold.

It is important for someone proposing to buy your beneficial interest to make a reasonable offer. If 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 (see section 4 of this guide).

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 and so the value of your share of beneficial interest is 'likely to be nil'.

However, some local councils may not want to accept a 'nil' value as the value of your beneficial interest because there are now various ways of releasing capital in the property (including equity release or re-mortgaging) on the whole, but it is not noted in guidance if local

councils can consider remortgaging as an alternative option to release capital. The focus should be whether the local council can attach a value to your beneficial interest **by identifying a willing buyer**. The Charging for Residential Accommodation Guide is currently being reviewed, and it is hoped that this issue will be addressed during the process.

Recently, it has also become apparent that some councils and some companies have 'offered' to become willing buyers by purchasing a 'share' of beneficial interest in a jointly-owned property. This would mean that a monetary 'value' could be placed on your jointly-owned beneficial interest by the council. However, at the time of writing this guide it is unclear about the long-term impact any arrangement such as this would have on the other joint owners or if any 'offers' have been accepted. Local councils have argued that almost invariably there will be a willing buyer (especially where the jointly owned property is not lived in by the joint owner) on the grounds that a reasonably informed buyer would be aware that after purchase he or she will have rights as a co-owner, which include the right to apply to court for a sale.

3.12.5 Seeking a professional valuation of the value of your beneficial interest

In reality, many councils will not seek a professional valuation of the resident's beneficial interest, which may be unlawful. Instead, they will accrue a debt of the outstanding care home fees, and once the

resident leaves the care home or dies, will send an invoice for the outstanding care home fees debt to the next-of-kin or person managing the resident's finances or estate. Often it is this person who is pursued for the money. Should there be any discrepancy between what you feel is the value of your share of beneficial interest 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 contacting the Royal Institute of Chartered Surveyors (tel.: 0870 333 1600; 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.dh.gov.uk. Section 7 focuses on the Treatment of Property in terms of a financial assessment.

3.12.6 The impact of an older person not being seen to have any beneficial interest in jointly owned 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 £23,000, 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 £21.90) and Pension Savings Disregard (£5.65 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 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, if the person you sign your interest over to were to sell the property with you as sitting tenant, this decision may also be regarded as 'deprivation of capital' (see CRAG, section 6 'Deprivation of Capital' and section 4 of this guide).

3.13 What happens if someone else lives in your property?

The value of your property will not count as capital if your spouse, civil partner 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 council social services have 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 then 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 place a legal charge 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 a legal charge on your property, but they should write and tell you what they are going to do. If a discretionary disregard is provided, it is wise to make a request for this in writing.

3.14 What happens if your property is rented out?

If you rent out your property to tenants, its value will be taken into account in a financial assessment, and, if it is valued at over £23,000 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. If you have a deferred payments agreement with the 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. Also, if the rental income, when added to the other income you have, is not enough to cover the full cost of the care home fees, you may have to ask for a deferred payment for the remaining fees (see section 3.11 for more information). You may also want to bear in mind that if you have income above Pension Guarantee Credit level (currently £130.00 for a single person), then you may be liable for income tax on that income. You can get more information from Her Majesty's Revenue and Customs: (tel.: 0845 010 9000; www.hmrc.gov.uk).

3.15 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 will have beneficial interest in the property (they contributed to the value of the property). 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, such adaptations could even be viewed as deprivation of capital (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).

4 Deprivation of capital

If you give away your property or savings deliberately in order to avoid paying for your care home costs, this is called 'deprivation of capital'. The Department for Work and Pensions and the council are entitled to 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, or
- Spending your capital on something not necessary, for example, an expensive painting.

Both the Department for Work and Pensions and the 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 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 £21.90 weekly 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 should both claim Pension Guarantee Credit as separate individuals (see section 3.2 of this guide). It is important that both you and your spouse, civil partner or partner put in new claims to make sure that you are both receiving the right amount of benefit.

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 £5.65 a week for a single person and £8.45 for a couple depending on your weekly income. This is paid to you as well as your Personal Expenses Allowance of £21.90.

6 Attendance Allowance and Disability

Living Allowance

If you are receiving financial assistance towards the fees from the council, Attendance Allowance and the care component of Disability Living Allowance will 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 3.9). You will need to re-apply if you then are paying the full cost of the fees after the 12-week disregard period ends.)

However, if the council provides you with a loan while your property is being sold (interim funding) or if you do not wish to sell the property (deferred payments) the rules are different.

If you are receiving 'interim funding' you can receive both Attendance Allowance or Disability Living Allowance and Pension Guarantee Credit if you are entitled to do so.

If you have been given a deferred payments agreement in order to postpone selling your property, you are eligible to receive Attendance Allowance or Disability Living Allowance care component but **not** Pension Guarantee Credit.

You will continue to receive Attendance Allowance and Disability Living Allowance care component if you are paying your own fees in full.

7 When it is the 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 rate**. The care homes that the council social services 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. See guide **12: Assessment and services from your local council in England** for more information about the care plan. If you live in Scotland, see guide **50: Assessment and services from your local council in Scotland** and, if you live in Wales, see guide **70: Assessment and services from your local council in Wales**.)

The guidance specifically warns local councils not to set 'arbitrary ceilings' on the amount they will agree to pay. Councils should increase the amount they usually pay if the home you have chosen is the only home with a vacancy that can meet your assessed needs.

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

If you **prefer** a more expensive home rather than the one the council has chosen for you, which 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 council to pay the 'top-up' in the long term. This is called a third party top-up agreement. It is important that any third party arrangements you make can continue for the 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 council will pay more towards your fees. See **guide 17: Care Home Fees: third party top-ups** for more information.

8 Paying your own fees

Even if you have savings over £23,000, you are entitled to an assessment of your care needs before you decide to move into a care home. It is advisable to request an assessment of needs, particularly if you will reach the £23,000 threshold quite soon. In some circumstances, your council will agree to make a contract with the care home, pay your fees and then seek reimbursement for what they have paid.

Again, if you have savings over £23,000, you can arrange this care in a care home without any involvement with the local council Social Services, but you can also receive support and assistance from the local council in finding a suitable home if you cannot make arrangements yourself or have no-one to do it for you. Even if you do make arrangements yourself the council should still give you advice on the type of care you need and its availability.

It is important to monitor your capital carefully so that you claim financial help from the council social services as soon as your capital drops to £23,000. When this happens the council will have to assess you to make sure that you meet their criteria for care in a care home. The council should not delay in doing this. If they do delay and you are paying the fees after your capital drops, they should reimburse you. You should contact the Pension Service (tel.: 0845 99 1234;

www.thepensionservice.gov.uk) and claim Pension Credit as soon as the council is paying your fees, as you may be entitled to Pension Guarantee Credit and the Pension Savings Disregard. If you have moved to a different area and were paying your own care home fees without the involvement of your local council, but now need help, you must apply to the council in the area you now live. Contact Counsel and Care's advice service for further advice about this issue (tel.: 0845 300 7585; www.counselandcare.org.uk).

If you only have enough capital to pay your care home fees for a short time, it is very important to ensure you receive an assessment of need from the local council and find out how much they would normally pay for your care. The council may not meet the full cost if you have moved into a care home that costs more than the council would usually pay. But, the Department of Health guidance informs councils who are aware of self-funding residents that:

- Councils should be aware of when someone's capital will reduce to £23,000;
- They should assess the care needs as soon as possible; and
- They may need to reimburse fees which bring the capital below £23,000.

8.1 Seeking advice about care fee planning

As the system for funding care home placements is so complex, there are a number of sources of advice you can contact to seek more information and guidance. Several agencies can advise about the

financial products on the market to help people invest money to pay for future care home fees. Sometimes, if money is invested in payment plans, it is possible to maintain ownership of a property if this is regarded as an inheritance or if the older person does not want to have to sell the property to pay for their care. You can obtain advice from Saga Care Funding advice service (tel.: 0800 056 8153; www.saga.co.uk/money-shop/care-funding), NHFA (tel.: 0800 99 88 33; www.nhfa.co.uk) or Eldercare Solutions (tel.:01707 368 945; www.eldercare-solutions.co.uk).

9 Temporary stays and respite care

You might move into a care home for a short period, perhaps for a break to give respite to your carer, or you might move into a care home for a trial period whilst you decide if you want to make it your permanent home.

If this care is provided, the council can charge you for temporary stays by calculating your financial contribution in the same way as if the move were permanent. However, the council is not obliged to use these rules for the first eight weeks. Instead, they can choose to ask you to pay what they think is a reasonable amount.

After eight weeks the council **must** apply the normal rules and assess your contribution as they do permanent residents. Either way, the value of your property is ignored if you plan to move back there.

If the council is financially supporting you to pay your fees, they must consider your needs, and those of your partner in respect to the payments for the upkeep of your home and necessary bills.

9.1 Free nursing care during a temporary stay

If you are going into a nursing care home for a short time of less than six weeks, the NHS will still pay the nursing element of your care, although they may not carry out an assessment if you have already been assessed as requiring nursing care (for example, you are an

existing client of the community nursing service). If your stay will be for more than six weeks an assessment of your nursing care needs must be carried out.

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 welfare 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 providing you intend to return home. 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 to your needs 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 council is allowed to choose if it will continue to pay its contribution towards your care costs when you are 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 into hospital or on holiday with your family.

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 Elderly Accommodation Counsel (tel.: 0207 820 1343; www.housingcare.org) and the Care Quality Commission (tel.: 03000 616161; www.cqc.org.uk), which both can give detailed information about registered care homes. 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**.

12 NHS continuing healthcare

NHS continuing healthcare is a package of care and support that is provided to meet **all** of your individual assessed needs, including physical, mental health **and** personal care needs, and is arranged and paid for by the National Health Service (NHS). This care can be provided in a variety of settings, including a hospital, a care home with nursing, a residential care home and in the person's own home.

Until 2007, NHS continuing healthcare has been allocated according to eligibility criteria set by individual strategic health authorities, based on national guidelines. Now, with the implementation of new directions and a new national framework, one national criteria should be used by every strategic health authority (SHA) or local primary care trust (PCT) to use to define who is eligible for NHS continuing healthcare.

In order to identify whether you meet the criteria, a continuing care assessment needs to be completed by a health professional. 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 nursing or care home fees.

Please see guide **27: Continuing Healthcare: should the NHS be paying for your care?** and guide **40: NHS continuing healthcare: understanding the assessment process** for more information about this.

13 Contracts with a care home

13.1 Social services' contracts with a care home

If the council social service has arranged your placement in a care home, it is responsible for making sure that the full cost is paid. It must also make sure that it gets the best care for you at the best price. The council should agree a contract with the care home owner saying how much the fees are and what sort of care you should receive. You should always ask to see the contract between the council and the care home to make sure it includes any special requirements that were stated in the care plan that was produced by the 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 Resident's contracts with a 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's rights and obligations
- How to make a complaint if you are not satisfied with your care
- The period of notice you will have to give or could be given to move out
- How the care home will meet any special requirements, such as dietary or religious needs
- How any changes to your care needs will be managed
- How your money and valuables will be secured, and who holds the responsibility for insuring them
- What liability insurance the care home has
- What training the staff receive
- Whether you will be charged to hold your place while you are away from the care home temporarily

- How you 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 can 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 Care Quality Commission (tel.: 03000 616161; www.cqc.org.uk) to discuss this. You could also contact Consumer Direct (tel.: 08454 04 05 06; www.consumerdirect.gov.uk).

13.3 Arranging payment of fees

The contract should provide details of how the fees are to be paid, although very often the council social services will arrange to pay a net figure to the care homes. This will be the difference between the weekly fees charged by a care home and your assessed income, which includes any third party top-up agreed. But, if the care home raises its fees or the third party top-up is unable to continue, you (or the person in the care home) will be responsible for the fees. For this reason, it is important to try to get the care home to invoice the council social services for the full amount of the care home fees and to ask the council to invoice you for your assessed contribution. That way, if there are any changes to the amount, the council social services should try to help resolve the problem whilst still maintaining full funding responsibility. The Charging for Residential Accommodation Guidance states that unless all parties (the care home manager and the resident themselves) agree otherwise, the council should pay the full fees

directly to the care home and invoice the resident for their assessed contribution (including the third party contribution) only.

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 a council, you can use the council's complaints procedure. Firstly, you can tell the 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 council administers its policies or if their policies are not effective.

You can complain about things such as the way that the council has valued your property or if the council is treating you as having given away your assets to avoid paying the home's fees. You can also complain about your care assessment, the services you are offered, or the amount that the council is willing to pay towards the fees of the home.

If you disagree with a decision made by the NHS, you can use their complaints procedure. You must complain within six months of the decision or within six months of finding out about the right to complain, providing it is within 12 months of the event. A complaint outside these time-limits will also be accepted, if you have a good reason for not complaining sooner. For more information see guide **18: Complaints about community care and NHS services in England**. If you live in Scotland, see guide **54: Complaints about community care and NHS services in Scotland** and, if you live in Wales, see guide **74: Complaints about community care and NHS services in Wales**.

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.

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, 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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