



counsel + care   
for older people, their families and carers

guide

## Guide 50:

# Assessment and Services from your Local Council in Scotland

If you are experiencing difficulties because of a disability your local council social work department can provide the support or assistance that you need. This system of support and services is known as community care. This guide explains the community care system in Scotland and your right to an assessment and services.

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There are differences in the ways each country cares for and supports older people. The information in this guide applies essentially to Scotland, although there may be similarities with countries in the rest of the UK.

If you live in England, please see our guide

**Assessment and Services from your local council in England** (guide number 12).

Or, if you live in Wales, please see our guide:

**Assessment and services from your local council in Wales** (guide number 70).

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# 1 Community care services

As you get older, you may need support to help you to live independently at home or you may need to move to a different type of accommodation, for example, a care home or sheltered accommodation. Your local council's social work department is responsible for making sure that older people with eligible care needs have the support they need. Your local social work department may be part of a Community Health Partnership (CHP) or a Community Health and Social Care Partnership. This is a partnership between social work and the local Health Board and voluntary sector.

Community care services can include:

- Care at home
- Meals on wheels
- Care in a care home
- Day care
- Respite care
- Re-ablement
- Aids and adaptations for your home.

Support services may be provided by the council social work department directly, or the council may commission other organisations to provide the service, for example, private home care agencies, private carers or local voluntary groups. You could choose to organise your own care and support services by using Self-Directed Support (see section 11).

Minor adaptations (such as a handrail or wheelchair ramp) and equipment (such as a walking frame or bath seat) may be provided free of charge (of up to £1000), depending on your assessed needs.

For more information on what support services may be available, see:

**Help at home: what may be available in your local area** (guide number 14).

## 2 How to find out about services

Your local council and the health board should publish information about the services that are available in your area. This should range from information leaflets up to and including a Health and Social Care Service Plan, which outline the future plan for services the council and health services will provide to meet the needs of the local people. The council should also publish its eligibility criteria for the services it is able to provide.

Information should be available from your local social work department, hospital or health board, or from other information points, such as the local council's information desk or a local library.

You may also want to ask a social worker/care manager about the services that you may be eligible for if you have requested a needs assessment.

The social work department should be able to provide you with a copy of their eligibility criteria for community care services, as this differs in each local council area. For more information on what services may be available locally, see our guide:

**Help at home: what may be available in your local area** (guide number 14).

### **3 Obtaining a needs assessment**

If you feel you need some assistance to manage your daily living tasks, you should contact your local social work department and ask for a needs assessment. Other people, for example, a relative, carer, and independent advocate, GP or nurse, can also contact the social work department and ask for an assessment on your behalf with your permission. The contact details should be in the phone book under the name of your local council and on the council website.

Social work departments have a duty to assess anyone who 'appears' to be in need of community care services. Therefore, the threshold for 'triggering' an assessment is low. If you have a disability, the social work department has a duty to assess your needs, regardless of whether it provides the services you need. You can ask for a carer's assessment if you help look after someone else, to determine what support you need in your caring role (see section 15).

You should not be asked about your capital or income when you request a needs assessment. The council's duty to provide a needs assessment is irrespective of your level of income/capital. You should only be asked about your income/capital after a needs assessment has taken place, and you have been assessed as having eligible care needs and will be receiving support services from the council (see section 10).

When you contact the social work department, you may be asked some basic questions such as your name, address, age, who your doctor is, your next-of-kin, the state of your health and the difficulties you are having.

Councils in each area publish their own eligibility criteria for access to services they provide, detailing the type of services they provide and the level of care need they will meet i.e. critical, substantial, moderate or low care needs. The current economic climate means that councils are

generally increasing their eligibility criteria from meeting lower care needs to only meeting higher level care needs such as substantial and/or critical care needs. Despite more focus on preventative services in Scottish Executive guidance i.e. preventing lower level care needs becoming critical care needs for as long as possible, the council still has discretion on what services it provides and what level of care need will be eligible for services – taking into account their overall budget/resources.

## **4 What happens at an assessment?**

Most types of assessment will be carried out in your own home, normally by a social worker or care manager. In some cases, your assessment or re-assessment may be carried out in hospital or a care home. You can have someone with you during the assessment if you wish, such as a relative, friend or an independent advocate. This may be particularly important if you have communication difficulties.

It may help to make a list of things you have difficulties with, and any questions you want to ask before the needs assessment.

The needs assessment should not cover financial matters, except to ensure you are receiving the correct benefits. Only after the needs assessment, if it is agreed that the council is to provide you with support services, should you be asked about your income or savings (see section 10).

If someone else is caring for you, for example, a partner or relative, they should be involved (with your consent) in your needs assessment, and both of you should have the opportunity to discuss any worries you may have. Your carer can also ask for their own 'carer's assessment', so that they can be supported in their caring role and also have time for themselves outside of their caring role. Your carer is entitled to have a carers assessment even if you do not want to have a needs assessment (see section 15).

Remember that your needs assessment is a chance for you to have your say. It is important to explain all the tasks you need help with, what specific help you need, how you feel about receiving support and where you want the support to be provided, so that all your care needs (including your social, emotional and psychological care needs) are recorded in your care plan(see section 8). For example, if you need to move into a care home but you want to live in a different part of the country to maintain contact with relatives, it is important to make this clear during the assessment.

The social worker or care manager who carries out the assessment should record what you have said about your difficulties, what you need help with and what you are able to do. They should also consult with other people involved in your care, such as a district nurse or your GP. The assessment will be used to decide if your 'presenting' care needs are eligible for support from the council and if so, what support will be offered. It will assess the risk of not providing services to you, with reference to the critical, substantial, moderate or low risk definitions of care need set out in the guidance.

If the council decides that they will not be providing you with a service as you do not meet their eligibility criteria, you remain entitled to a copy of your needs assessment.

If the social work department are not able to meet your assessed need, they should record that this is an 'unmet need'.

If you have eligible care needs then once a care package has been put in place, you should receive regular re-assessments (at least yearly) to make sure that all of your assessed care needs are being met properly.

You may also request a re-assessment of your care needs from social work at any time, if the care package is not meeting your assessed care needs, if your care needs are changing and/or you need more/ less support.

## **5 If you are refused a needs assessment**

If you are refused a needs assessment, it may be because the social work department does not feel you are in need of any services. This may also be because the person you spoke to did not ask you the right questions and/or was not fully aware of your care needs. If this happens, it may be helpful to write a letter to the social work department. Address the letter to the manager of adult social services (remembering to keep a copy) explaining your circumstances in more detail. You can ask your carer, a relative, a friend, an independent advocate or your GP to help you do this and/or to send in more information about your health and care needs.

Some councils offer the option of a self-assessment of your care needs. This is sometimes carried out online on the council website or may be carried out using assessment forms which you send back to the social work department. You can request a face-to-face needs assessment meeting with a social worker. Some councils may provide a telephone assessment but such an assessment has to be comprehensive to stand up to scrutiny as being an actual needs assessment. If you have completed the telephone assessment or the self-assessment and you have been turned down for support, you may want to contact the social work department to request a face-to-face needs assessment, to ensure that all your care needs are fully covered in the needs assessment.

If you are still not satisfied with the response from the social work department, you could consider making a complaint. For more information about doing this, see our guide

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

## 6 Delays in assessments

If you develop a very serious need, or your existing care arrangements have broken down, an urgent needs assessment can be carried out by your local social work department. This may be necessary, for example, to provide you with services quickly to avoid an admission to hospital. Alternatively, the council has the power to provide you with an emergency care package until a full needs assessment can be carried out by social work.

There is no definitive time-limit for when a needs assessment has to be carried out by social work. Your local social work department may publish its own targets for carrying out an assessment and you may want to ask them about this. The length of time you wait may depend on your circumstances and the other requests the council has had. If you feel your situation is urgent, you may want to state this when you request the assessment. If you think you have been waiting for more than a 'reasonable' time, i.e. 4 to 6 weeks if it is a non-urgent situation, you should consider contacting the local social work department (the adult services manager or duty social worker) to ask when you can expect the assessment to take place. If you are unhappy with their response, you may want to consider making an informal or formal complaint. For more information about making a complaint, see our guide:

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

### 6.1 Guidance relating to assessments

There has been some guidance that has touched on councils' response to, and arrangement of, community care needs assessments.

The guidance is clear that:

'the minimum standards checklist will not detract from the need for Single Shared Assessment (the needs assessment) to be developed and owned

locally, in which agencies will develop their own standards. But these minimum expectations represent a baseline’.

The minimum standards checklist for councils also includes the following:

‘What is expected:

Be based on evidence that the Single Shared Assessment process works effectively at the local level:

Does the Single Shared Assessment process enable speedier responses to referrals?

Does the Single Shared Assessment process enable speedier assessment (without compromising the quality of the assessment)?

Does the Single Shared Assessment allow speedier access to services?

Have performance standards been set for response times?

How to measure:

Are people using services, including carers, being given the opportunity and enabled to comment on their experience of Single Shared Assessment?’

## **6.2 Guidance relating to the provision of services**

There is also some guidance relating to timescales for delivering services to meet any eligible care needs you have. The guidance aims for:

‘a common commitment to deliver personal and nursing care services to older people within a maximum period of six weeks following the identification of need, identified as being at critical or substantial risk as regards their independent living or wellbeing’.

Since 2009, Scottish local councils have been expected to ensure that their local eligibility criteria and waiting times, for accessing nursing and personal care services for older people, comply with the standards set out in the guidance. The standard waiting times apply only to personal and nursing care services. The guidance can be viewed at

[www.scotland.gov.uk/Topics/Health/care/17655/research/NewPage/guidancedoc/Q/EditMode/on/ForceUpdate/on](http://www.scotland.gov.uk/Topics/Health/care/17655/research/NewPage/guidancedoc/Q/EditMode/on/ForceUpdate/on).

## 7 The Single Shared Assessment

The Single Shared Assessment (SSA) guidance has been implemented so that you can expect to have only one needs assessment which will cover all of your health and social care needs so you do not have to have duplicate assessments where you are repeating information to different professionals. The exception is the assessment for NHS Continuing Healthcare which you still have to have separately, in addition to the needs assessment.

Your needs assessments may require input from a wider range of professionals (i.e. specialist assessments if you are in hospital at the time of the needs assessment) and agencies, which might include housing departments.

The type of needs assessment you receive will depend on your care needs. For example:

- If you are having difficulty preparing a hot meal, you may be assessed for this by a simple (contact) assessment and then provided with a Meals-on-Wheels service.
- There may be the option of a self-assessment. If you decide to self-assess, you may want to get support with the assessment from a family member, friend or independent advocate. You may also want to ask your GP to contribute information towards the assessment to make sure that you are clear about all the help you need and the care needs that you have.
- If you have more complex care needs (which may be identified in your self-assessment or in a face-to-face assessment with a social worker) you will need a more detailed comprehensive assessment, which should be coordinated by a social worker or care manager. They may also contact other people involved in your care, such as a

care worker, District Nurse, GP or medical specialist. Occupational Therapists and Physiotherapists.

- If you are in hospital at the time of the needs assessment and you have quite specific needs, perhaps related to a particular medical condition, you may need a 'specialist assessment' by an appropriately qualified professional, for example, a doctor, pharmacist, or specialist nurse.

It is important that the needs assessment looks at all areas that you may need support with. All of your individual care needs and your environment should be considered, including:

- Your perspective, including expectations and motivation (including emotional and psychological care needs);
- Your carer's perspective (if you have a carer);
- Relationships (family, social and care contacts);
- Spiritual, religious and cultural matters;
- Risk and safety;
- Your immediate environment and what support you already have access to;
- Personal care and physical well-being;
- Mental health;
- Clinical background and any history of medical problems;
- Disease prevention;
- Senses;
- Communication.

If you do not feel that your assessment has covered everything, you can ask for any other care needs to be taken into account or seek a re-assessment. If this is refused, or you are not satisfied with the response, you could consider making a complaint. For more information, see:

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

## **8 The importance of your care plan**

If it is decided following your assessment that you are to receive support services provided by the social work department in your own home, or you are to move to a care home partly funded by the council, you should be given a written care plan (sometimes known as a support plan or care and support plan) that clearly states all of your individual assessed care needs. The care plan should include details of how and where you will receive the support you need. If you are provided with a service, the care plan should include who will supply this along with the contact details of someone you can contact if you have a problem.

Your care plan should be agreed between you and the social worker. If you feel that your care plan does not accurately reflect all your care needs you should raise this with the social worker and ask for the care plan to be amended. A needs re-assessment may be an option to consider too if there is a wide gap between your understanding of your care needs and the care needs that are stated in your written care plan.

There is no requirement in legislation for a care plan to be provided, but there is national guidance which emphasises that, as well as a copy of your needs assessment, you should receive a copy of the care plan.

The following quote is from national guidance:

'[Older people] should be involved in the assessment process and give their agreement to any confidential information being relayed on a need-to-know basis to other professionals or care providers. They need to understand the purpose of the assessment and should know that they have a right to a copy of it and the subsequent care plan'.

One example of why the care plan and its contents is important relates to your choice of care home and when the council can or should not seek a third party top up to help pay for your care home fees.

## 9 Provision of services

Each council, or Health and Social Care Partnership (which includes the local council social work department), is able to set its own eligibility criteria for access to community care services. These are based on what level of care needs they will meet (low, moderate, substantial or critical care needs) and the services they provide. There are no national criteria at this time defining the services each council has to provide.

The council is allowed to consider its own resources when they decide what services to provide. As such, some councils only meet critical or substantial care needs although some councils do provide 'lower level' preventative services and other preventative services such as re-ablement. If a social work department has decided that your care needs meet its eligibility criteria, it cannot then use lack of resources as a reason for not meeting your care needs, although they do have some flexibility on how to meet any assessed eligible care needs. This is linked to an appropriate needs assessment and/or re-assessment if services are changed or withdrawn.

Once your care needs have been identified in your assessment, it will be decided if all or some of these will be met (eligible care needs). The council social work department must meet the eligible care needs you have been assessed as having. If the council assesses you as needing a service, this can be provided directly by the council, or they may have a contract with another agency that will provide the care. This could be a local voluntary organisation or a private care agency. For further information about what support services may be provided to you, see our guide:

**Help at home – what may be available in your local area** (guide number 14).

It may not be possible for the council to meet low or moderate level care needs (particularly at a time when the council has ever more scarce resources), although you should always seek a needs assessment if you

have support needs to see what the council does provide and to find out your exact care needs. If you are not eligible to receive any services that the council provides, you may want to consider buying care privately from a home care agency if you can afford to do so.

To find a private home care agency in your area you may want to contact:

- United Kingdom Home Care Association (UKHCA) (tel.: 0208 288 1551; [www.ukhca.co.uk](http://www.ukhca.co.uk)). The UKHCA is the professional body for home care agencies. Member home care agencies are required to comply with UKHCA's Code of Practice to ensure high standards of home care provision.
- UPDATE (tel.: 0131 669 1600; [www.update.org.uk](http://www.update.org.uk)) is Scotland's disability information service. They may be able to provide information about local private carers and care agencies.
- Community Care Providers Scotland (tel.: 0131 337 3295; [www.ccpscotland.org](http://www.ccpscotland.org)) may also be able to provide this information.

You may want to ensure that any care agency you contact is registered with the Social Care and Social Work Improvement Scotland – 'the Care Inspectorate' (SCSWIS) (tel.: 0845 600 9527; [www.scswis.com](http://www.scswis.com)). SCSWIS replaced the Care Commission in April 2011. It is the body responsible for inspecting and regulating care agencies and care homes in Scotland in line with the various national care standards issued by the Scottish Executive. For further information about national care standards, see the Scotland's National Care Standards website: [www.nationalcarestandards.org](http://www.nationalcarestandards.org)

You may be able to access support services provided by local voluntary organisations (such as a home visiting service, shopping service, befriending etc). These services can be accessed whether or not you receive support from the council but may affect the amount of care provided by the council, if these services help meet any of your eligible care needs. The Age Scotland Helpline (tel.: 0845 125 9732) may be able to help you identify local charities that provide support services.

## 10 Charging for services

In Scotland, if you are aged 65 or over, any care you need that meets the definition of personal care, is 'free' at home or in a care home, if you are assessed as needing it in the needs assessment. You should also receive health services, such as visits from a district nurse, free of charge.

'Free' nursing care (which is not defined in the regulations) is available to people of any age in a care home who have been assessed by social work (via a needs assessment) as needing residential nursing care.

The council *can* charge for personal care if you are under the age of 65 and can also charge for domestic care i.e. care that does not come under the definition of personal care.

Councils have the power to charge for the following adult non-residential care services:

- day care;
- lunch clubs;
- domiciliary services, including meals on wheels;
- wardens in sheltered housing;
- community alarms;
- laundry services; and
- aids and adaptations for disabled people.
- practical assistance in the home
- after-care services for people with a mental illness.

Social work can, on a case-by-case basis, assess whether you have other income available when assessing you financially for any chargeable (i.e. not free personal care) home care support. The council has discretion to take your partner's/spouse's income and capital into account in the financial assessment for the services that you receive at home (but not in a care home). This is essentially the 'liable relative' rule for home care support

(the liable relative rule for care home financial assessments has been abolished). Councils are advised by the Confederation of Scottish Local Authorities (CoSLA) to consider, in appropriate cases, whether a client has 'sufficient reliable access to resources, for them also to constitute his or her means for the purposes of charging' – in other words, other income/capital that they can access to increase their ability to pay charges for care. The rationale may be that both parties (the person receiving care and their spouse/partner) would benefit if domestic care is provided at home.

### **10.1 Council financial support for home care fees**

Any capital/savings you (and possibly your partner/spouse) have below £10,000 will be disregarded from the financial assessment for home care. The council has discretion to increase this capital level.

If you (and possibly your partner/spouse) have capital at a level which would attract significant tariff income, calculated as £1 for every £500 you have in capital/savings above the capital limit, (CoSLA recommends councils adopt the Pension Credit capital limit of £10,000 and if they do not, this 'should be clearly documented and approved') and/or you have income above the cost of the 'chargable' care you have been assessed as needing, you may have to pay privately and in full for any services you receive.

There is no upper capital limit at which services/support would be denied. This is because care is needs-based, not based on your ability to pay. If you are unsure whether your capital and income are at a level that would make you eligible for financial support to meet your eligible care needs, you may want to seek a needs assessment and the financial assessment will follow on from that if you have eligible care needs.

### **10.2 Financial assessment and income thresholds**

If you have capital or income at a level which entitles you to council support

to pay for your home care, any charge should not result in your weekly income being taken below the minimum amount that CoSLA recommends. CoSLA is currently reviewing all home care charging policies in Scotland. It may be that until they report on the review that for 2012-13 as with 2011-12, a single person's income should not be taken lower than £166.25 a week, which is the Pension Guarantee Credit amount of £142.70, plus an additional buffer of 16.5%. A couple with joint income should not have their income taken lower than £253.85, which is £ 217.90, plus an additional 16.5%. These amounts should be 'net' or after deductions for of council tax and housing costs – including rent/mortgage payments.

If the local council takes your disability benefit, such as Attendance Allowance (but excluding the mobility component of DLA), into account when assessing charges, consideration should be given to disregarding any costs that you incur as a result of the disability. Examples of this are extra heating and washing costs although there appears to be, a lack of guidance clarifying that these costs should definitely be allowed for (i.e. allowing you to keep extra income above the minimum amount outlined above). As the CoSLA guidance put it 'Councils may also wish to disregard other specific costs of living, for instance disability related expenditure'. This looks like it may be addressed in the forthcoming review of home care charging guidance and future recommendations.

### **10.3 Problems paying the assessed financial charge**

If you have difficulty paying the charge for receiving services you can request that the council consider a charge reduction or 'waive or abate' the charges. You may also want to ask for a financial re-assessment to ensure that all of your income/capital and expenditure has been taken into account and calculated correctly and that you are receiving the correct benefits. The council cannot withdraw services if you cannot or refuse to pay the charges that have been correctly calculated, but they are within their right to pursue the debt if it is established that the charges are 'reasonable'.

The council should publicise information on their charging policy and how they calculate how much you should pay. CoSLA is currently reviewing the national guidance on home care charging so it is likely that councils will for the moment adopt their own charging policy based largely on previous CoSLA home care charging guidance. Please contact your local council or CoSLA for more information. You may be entitled to claim Disability Living Allowance or Attendance Allowance to help you pay for your support services. For more information, see our guide:

**Disability Benefits: Attendance Allowance and Disability Living Allowance** (guide number 3).

The mobility component of Disability Living Allowance should be disregarded in your financial assessment if you receive care at home or in a care home.

If you only receive services during the day from social work, and receive the higher rate of Attendance Allowance, then only the lower rate level should be taken into account in your financial assessment. This is because the higher rate is to help you pay for care for both day and night, while the council social work department is only helping to meet your daytime needs.

If it is identified in your care plan that your needs are too high or complex to be met in your own home and they need to be met in a care home, you should be charged under different guidance set out in the Charging for Residential Accommodation Guidance (CRAG). In a care home, you should also receive any nursing care or personal care free of charge, if you are assessed by social work as needing it and they have agreed a contract with the care home for these payments. Nursing care is paid at a rate of £74 per week, and personal care at a rate of £163 per week. For further information about paying care home fees see our guide:

**Care Home Fees: paying them in Scotland** (guide number 52).

## **11 Self-Directed Support**

If you are eligible for support services from the council (because you have eligible care needs and capital or income at a level that makes you eligible for financial support from the council), you should be offered access to the Self-Directed Support scheme as an alternative to receiving support provided directly by the council social work department (or a private care agency contracted-in).

The financial assessment process for Self-Directed Support is the same as it would be for home care support (see section 10.1). You may need to pay an assessed financial contribution towards the cost of the care depending on your level of income and savings (and maybe your partner/spouse's). If you are aged 65 or over and wish to use Self-Directed Support to pay for care at home, you will not be asked to pay towards the cost of any services provided under the definition of 'free personal care'.

Self-Directed Support can also be used to purchase the care you require to meet your care needs that come under 'free personal care'. You can choose who provides the care, rather than social work providing or arranging this. You can purchase care from social work or from private carers/agencies.

You do not have to accept Self-Directed Support and can continue to receive support directly from or arranged by the council.

If you want to access Self-Directed Support, you can choose to have all or some of your services provided or arranged by social work and use Self-Directed Support to arrange the rest of the care you require, or you can arrange all the care yourself. A 'care broker' can help you to identify what services are available to help you meet your needs and can help to put these services in place.

For further information about Self-Directed Support, please see the website [www.selfdirectedsupportscotland.org.uk](http://www.selfdirectedsupportscotland.org.uk) It has a link to a guide called 'A users guide to self directed support in Scotland'. The guide directs you to support services across Scotland that can help you to manage your Self-Directed Support. The website also contains sections on 'setting up your self-directed support package', 'having a contract with a provider' and 'becoming an employer'. If you have any questions regarding Self- Directed Support, Age Scotland Helpline (tel.: 0845 125 9732) or Care Information Scotland (tel.: 08456 001001; [www.careinfoscotland.co.uk](http://www.careinfoscotland.co.uk)) may be able to advise you.

Please also see the Scottish section of our guide:

**Home Care: using Direct Payments and personal budgets** (guide number 23).

## **12 A review of your care needs**

If your care needs change, if you do not feel that your first assessment took all of your individual needs into account, or your original care package is failing, you can ask for a review or re-assessment from your local social work team. You should try to contact the person who carried out the first assessment, or you can contact the duty social worker. If they refuse to review your assessment/care package, you can request a new needs assessment or make a complaint.

If it is urgent because your care package is failing and/or you have urgent care needs that are not being met and you are 'at risk' you may want to ask for an emergency package of care to be provided until an assessment or review is carried out.

The council social work department should arrange to review your care package at least once a year or sooner than this if, for example, you have recently been discharged from hospital with a care package. They should tell you when the review is to be carried out so that you, your representative and other related professionals can be involved.

The council cannot withdraw or reduce the services you are receiving without carrying out a re-assessment of your needs to determine if it is 'safe' to do so.

## 13 Refusing services and other problems

Social work departments must meet your assessed needs if they fall within the council's eligibility criteria, but they may consider their budget when deciding how to meet your needs. This means that they may offer you their 'preferred option', which may be the cheapest option. For example, if you need 24-hour care, it may be that your needs can be met most economically in a care home, rather than receiving services in your home.

You cannot be forced to accept services at home (if you have the mental capacity to make your own welfare decisions). For example, you may not want to go to a day centre or have care staff visiting you at home. If you are offered services that you do not want, discuss your concerns with your social worker or care manager and try to arrange for your needs to be re-assessed and the services changed.

Similarly, you cannot be forced to move to a care home if you do not want to and you have the mental capacity to make your own welfare decisions. However, there may be circumstances where social services can apply legal principles enabling them to place you in a care home if you lack mental capacity and it is assessed that it is in your 'best interests' to move to a care home. You may want to contact the Office of the Public Guardian Scotland (tel.: 01324 678300; [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)) for information about Continuing (financial) or Welfare Power of Attorney or, if the older person has already lost mental capacity to take their own specific decisions, Financial or Welfare Guardianship.

There may be limitations on your right to refuse a care home placement. For example, because the council can take its budget into account when providing services, if you stay in your own home, you may not receive enough help from the social work department for you to live comfortably and safely. If it is not possible for the social work department to increase the level of your care at home, you may have to sign an agreement

acknowledging that some of your needs are not being met. You should not be refused all services if you have eligible care needs but you may have to negotiate with the council social work department to agree that unpaid carers will meet some of your needs, or that additional private care will be paid for by you.

This scenario may be slightly less likely in Scotland due to the fact that there is no strict upper limit for free personal care at home (you will receive up to at least £163) as it is needs-led provision. There is a strict limit of £163 for free personal care in a care home.

If the above scenario does become relevant and you want to stay at home, you may want to take advice, including legal advice from the Legal Services Agency (tel.: 0131 228 9993; [www.lsa.org.uk](http://www.lsa.org.uk)) to see if you can increase your care package at home from the council. This could include a challenge under the Human Rights Act, Article 8 (the right to respect for private and family life), if the care home placement is being recommended simply because of economic considerations and not because there is a 'pressing social need' for the care placement.

If you feel that you are being pressurised into moving to a care home against your will, you may wish to seek further advice from Counsel and Care (tel.: 0845 300 7585; [advice@counselandcare.org.uk](mailto:advice@counselandcare.org.uk)).

Independent Advocacy might be a useful option to consider if there are problems making a decision about your care arrangements. An independent advocate can help to ensure your views are heard and you have your rights taken into account in a discussion about care options. You can find an independent advocate by calling the Scottish Independent Advocacy Alliance (SIAA) (tel.: 0131 260 5380; [www.siaa.org.uk](http://www.siaa.org.uk)). There is more information about advocacy in our guide:

**Independent Advocacy** (guide number 25).

## 14 Challenging decisions

Every local authority has a complaints procedure, which you can use if you are unhappy with any aspect of the service from the social work department. This could be because you are not satisfied with your needs assessment, have been refused an assessment, have experienced delays, or are concerned about the quality of the services you receive. For more information about making informal and formal complaints, see our guide: **Complaints about community care and NHS services in Scotland** (guide number 54).

The current complaint process may be changing in the near future following the publication of the following The Scottish Public Services Ombudsman published principles and standards and model complaints handling guidance for public sector complaints. These have been consulted on and the Scottish Executive government has drafted new complaint guidance which at the time of writing had not yet been published.

## **15 Carers' needs**

Your local council social work department is required to consider the needs of unpaid carers. If you are an unpaid carer, particularly one who provides 'substantial and/or regular support', you may wish to request an assessment of your needs in your own right. This is known as a carer's assessment.

### **15.1 Carer's assessments in Scotland**

If you are a carer you can request a carer's assessment by contacting your local social work department. This can be done at the same time as, or separately to, the needs assessment of the cared for person. The contact details for your local social work department should be in the phone book under the name of your local council and/or the council website.

The Social Work department in the area where you are ordinarily resident will usually be responsible for carrying out the carer's assessment. The social worker or care manager will co-ordinate the assessment but should also involve any relevant professionals. This could include someone from the local housing department depending on where you care for that person – in your own home or in the older person's home.

Unlike the needs assessment (which uses the Single Shared Assessment process and guidance), there is no legislation at this time which details exactly what should be covered in the carer's assessment. Guidance CCD3/2008 builds on the previous guidance in CCD2/2003 and recommends 'in order to achieve good outcomes the carer's assessment should:

- Identify the care provided by the carer
- Establish what level of care the carer is willing and able to provide, and help them to determine whether their caring role is sustainable

- Identify current and potential risks to the carer's health and wellbeing as a result of the caring role
- Determine what resources the carer needs to support them in their caring role, and agree how these resources can best be provided
- Determine what resources the carer needs to enable them to have a life of their own, and agree how these resources can best be provided
- Determine what the carer needs to maintain and improve their own health and wellbeing, and agree how these resources can best be provided
- Take the carer's views into account when agreeing any support to the carer and cared-for person'

Looking at the guidance together it could be described as 'best practice' (though not officially) that the carer's assessment would cover issues such as the physical and emotional health of the carer, as well as how sustainable their caring role is without additional support. The assessment may also, as with the assessment in England, look at the leisure, work and/or educational/training activities that the carer wants to or does take part in, although the guidance is less explicit on this in Scotland.

There is no specific right to services in your own name as a carer. Guidance CCD2/2003 does state that services may also be provided for the carer but it may be (and usually is the case) that the services provided are for the cared-for person. If the services are for you, you may have to make a financial contribution towards them, depending on your financial circumstances. However local councils have discretion to waive or abate charges for carers – this may have particular relevance to carers, given that they can sometimes be under financial strain.

Services that may be provided as a result of a carer's assessment could include a 'sit-in' service, a day centre place or a short residential stay in a

care home for the cared-for-person. The carer's assessment could also result in a respite break for the cared for person and/or the carer (see section 15.4 of this guide).

## **15.2 Legislation and policy background**

The Carers (Recognition and Services) Act 1995, section 2 was the first piece of legislation to establish a carer's right to ask for an assessment of their own needs, however it was tied to the person they care for having an assessment/reassessment of their needs.

The Community Care and Health (Scotland) Act 2002 extended the rights of carers in relation to assessments. Section 8 placed a duty on local authorities to take into account the care provided by a carer, and the views of the carer, before deciding what services to provide to the cared for person. Section 9 of the same act gave carers the right to a carer's assessment regardless of whether the older person is having a needs assessment – removing the restriction of the Carers (Recognition and Services) Act 1995. It also gives carers a right to a separate carers' assessment, even if the cared-for person refuses an assessment or the provision of services.

Guidance CCD2/2003 advises councils to determine the wider impact of caring on the carer and states that councils should 'not assume that the carer's contribution will continue at any set level' and should recognise 'the caring responsibility that the carer is willing and able to take' when assessing the care needs of the older person. It may be helpful here to draw a distinction that is used in the English guidance relating to carers assessments – that there is a difference between caring for and caring about someone.

## **15.3 Carers Strategies in Scotland**

Scotland's Strategies for Carers and Young Carers were launched in July 2010 and outline support for carers and young carers in Scotland over the

next 5 years. These Strategies were developed by the Scottish Government in partnership with the Convention of Scottish Local Authorities (CoSLA), the NHS, and voluntary organisations such as Carers Scotland.

### **Adult Carers Strategy**

'Caring Together' is the strategy for adult carers in Scotland and contains 68 actions aimed at enhancing and developing support for adult carers.

The main actions of the strategy are:

- The development of a carers' rights charter
- Improving carers' assessments
- Improve access to advice and information for carers
- Representation of carers on Community Health Partnerships
- Access for carers aged 40-64 to health checks
- Additional short-breaks delivered by the voluntary sector
- Promotion of carer friendly employment practices

You can view Scotland's adult carers strategy at:

[www.carersscotland.org/Policyandpractice/Scotlandscarersstrategy](http://www.carersscotland.org/Policyandpractice/Scotlandscarersstrategy).

### **Young Carers Strategy**

'Getting it right for young carers' is the Scottish government's strategy for young carers. Whilst it recognises that some young carers want to care, it reinforces the Government commitment to relieve young carers of inappropriate caring roles so that they are supported to be children and young people first and foremost.

The main actions of the strategy are:

- Develop measures to help professionals identify young carers
- Introduce a classification of 'young carers' in schools census
- Produce a guide on young carers for schools and teachers
- Better information and advice for young carers
- Promote increased provision of flexible, short-breaks

- Encourage young carers to plan to achieve their career aspirations, highlighting their options and the support that is available.

You can view Scotland's young carers strategy at:

[www.carersscotland.org/Policyandpractice/Scotlandscarersstrategy](http://www.carersscotland.org/Policyandpractice/Scotlandscarersstrategy).

#### **15.4 Carer's Allowance**

Carer's Allowance is a benefit payable to people who are unable to work full time because they are caring for another person for at least 35 hours a week. To be eligible for Carer's Allowance, the cared-for person has to be in receipt of Attendance Allowance or the middle/ higher rate care component of Disability Living Allowance. Your local Citizens Advice Bureau ([www.cas.org.uk](http://www.cas.org.uk)) can advise on entitlement to Carer's Allowance and may be able to help you apply.

For more information about Carer's Allowance, see our guide:

**Carers: What support is available?** (guide number 10).

#### **15.5 Respite care**

The purpose of a respite break is to give the carer some time off from their caring role. This could involve the cared for person moving temporarily into a care home or a paid carer 'sitting in' with the cared for person to give the carer a break. Respite services may be provided through the local council social work department, carer support groups or voluntary organisations –see section 15.6 for contact details.

Carers have no absolute right to respite care at this time but it may be provided by social work if the cared for person is assessed as needing respite care as part of a needs assessment or if the carer is assessed as needing this support as part of the Carers Assessment.

In recent years, there has been an increase in the amount of respite care

provided by local councils. The Scottish Government has stated: 'the Concordat between the Scottish Government and the Convention of Scottish Local Authorities includes a commitment to progress towards delivering 10,000 extra respite weeks per year. The Scottish Government is working towards a manifesto commitment that by 2011 carers in greatest need will have a guaranteed annual entitlement to breaks from caring'.

In July 2010 the Scottish government announced a Short Breaks Fund of £5 million over 5 years for 52 voluntary organisations to provide short breaks and respite care for carers. To search for respite breaks, please contact Shared Care Scotland (tel.: 01383 622462; [www.sharedcarescotland.org.uk](http://www.sharedcarescotland.org.uk)) who are co-ordinating the scheme. They have an online database and helpline to put carers in touch with short breaks providers and support services that meet their needs.

### **15.6 Carers' organisations**

- Carers UK (tel.: 0808 808 7777; [www.carersuk.org](http://www.carersuk.org)) provides advice and information for carers. They may also be able to put you in touch with a local carers' support group that can provide you with emotional and practical support.
- Carers Scotland ([www.carersscotland.org](http://www.carersscotland.org)) provides a similar role to, and is linked to, Carers UK. They can be contacted on the same helpline number as above.
- The Princess Royal Trust for Carers (tel.: 0141 221 5066; [www.carers.org](http://www.carers.org)) provide advice, information and local support services for carers.
- Carers Direct (tel.: 0808 802 0202; [www.nhs.uk/carersdirect/Pages/CarersDirectHome.aspx](http://www.nhs.uk/carersdirect/Pages/CarersDirectHome.aspx)) is a comprehensive national information service for carers. It is managed by the Department of Health and NHS Choices.

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

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