

Factsheet 39w ● July 2024

Paying for a care home in Wales if you have a partner



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1 Information about this factsheet

This factsheet explains how being part of a couple can affect a care home resident, including:

- their eligibility for local authority assistance towards care home fees;
- the affect that one of the couple moving into a care home may have on potential eligibility for particular welfare benefits; *and*
- effects on the eligibility for local authority assistance towards fees, should both members of a couple enter care home accommodation.

This factsheet mainly focuses on the situation where people seek state support (rather than if they are privately arranging residential care). The factsheet covers a part of the overall residential care charging rules and should be read in conjunction with our other factsheets on care home charging, particularly Age Cymru's Factsheet 10w *Paying for a permanent care home placement in Wales*.

Note: The information given in this factsheet is applicable in Wales. Different rules may apply in England, Northern Ireland and Scotland. Contact Age UK, Age NI and Age Scotland respectively for further information.

1.1 Definitions and terminology

Local authority social services departments

In this factsheet references to the 'local authority' or 'council' will refer to the **adult social services department of the local authority**. Elsewhere, you may hear the relevant social services department referred to by a number of similar variations, such as:

- social care department;
- adult social services;
- older persons' department; *or*
- older persons' team

Adult social services teams are responsible, among other duties, for assessing people's need for 'care and support' or 'social care' services and deciding whether those needs meet the eligibility criteria.

Note: Finding contact details for your social services department

If you have internet access, you can search for your local authority using your postcode on the Welsh Government's website:

www.gov.wales/find-your-local-authority

Alternatively, Age Cymru Advice can provide them – see section 11 for contact details.

'Care homes'

The term 'care home' covers any establishment providing accommodation with either:

- just personal care; *or*
- personal care together with nursing care.

Often the terms 'residential care home' and 'nursing care home' might be used to differentiate between the two types of home, though within each of these brackets there can be variation in the types of care needs that the home may be able to handle (Age Cymru's Factsheet 10w *Paying for a permanent care home placement in Wales* and Factsheet 29w *Finding care home accommodation in Wales* have sections with further information on the different types of care home).

Both residential care homes and nursing care homes can provide various specialisms/services (e.g. dementia care). However, a home must not provide nursing care if it is not registered for that purpose. Some homes may have some beds registered as providing accommodation and personal care only, and other beds registered for nursing care as well.

All care homes must be registered as 'service providers' with the regulator, the Care Inspectorate Wales (CIW), who are responsible for the inspection and registration of homes – see section 11 below for contact details for CIW.

Ownership of care homes

- **Private sector care homes** – these homes are run for profit by private organisations or individual proprietors.
- **Voluntary sector homes** – these homes are non-profit making and run by registered charities, religious organisations and housing associations, sometimes for particular groups of people.
- **Local authority care homes** – some care homes are still run directly by the local authority.

2 Legislation covering the social care system in Wales

2.1 The Social Services and Well-being (Wales) Act 2014 and accompanying Code of Practice guidance – relevance to the social care system in Wales

This Act was fully implemented in April 2016 and is the main legislation that covers the social care system in Wales, including:

- the social care assessment process;
- related rules in regard to arranging and paying for residential care homes and nursing care homes¹;
- the guidance documents that local authorities must use when assessing needs; *and*
- the guidance documents that local authorities must use when means testing people who may need to pay towards their services.

Many of the sections in this factsheet (and other Age Cymru factsheets on social care topics) will use this Act, and the Welsh Government Code of Practice guidance for local authorities which accompanies it, as a main source of information. References will be provided in the text where relevant.

¹ The Act also covers the rules in regard to arranging and paying for care at home/non-residential services, though that issue is not covered in this particular factsheet.

3 Introduction – local authority assessment of care needs and eligibility for services

Your local authority must carry out an assessment of your care and support needs to establish that you require a care home *before* it can assist you with the cost of the placement.

This particular issue is not covered in any detail in this factsheet, but further information can be found in Age Cymru's:

- Factsheet 41w *Social care assessments for older people with care needs in Wales*; and
- Factsheet 10w *Paying for a permanent care home placement in Wales*.

Under the *Social Services and Well-being (Wales) Act 2014* a local authority has a legal duty to carry out an assessment of anyone living in its area who *may* need community care services, once it becomes aware of this need.

Also, someone's right to have their needs assessment is not affected by the level of their financial resources or other circumstances.

However, financial resources will become relevant at the next stage, once a needs assessment has determined that the level of the person's needs means they are eligible to receive services (and thus a financial assessment will be carried out to determine how much they should contribute towards the cost of those services – see section 4 below).

Note: Local authority duties on the provision of information & advice and advocacy for people going through the care needs assessment and/or provision of services process

The *Social Services and Well-being (Wales) Act 2014* places duties on authorities to provide “information, advice and assistance...relating to care and support”, including – as a minimum – “publication of information...on how the care and support system operates in the local authority area...the types of care and support available [and] how to access [this]”².

It also contains duties for authorities in regard to advocacy services. If you have difficulty in expressing your views and needs and feel that this would be excessively difficult within the assessment process, then an advocacy service may be of help to you. The Act has strengthened people’s rights to advocacy support in relation to the social care assessment process. In many instances, the requirement on the authority will be to make people aware of the availability of advocacy support, should they wish to utilise this; in others the authority will have a *specific duty* to “arrange an Independent Professional Advocate (IPA)” for someone³:

Further information can be found in Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales*.

4 The local authority financial assessment if you are a couple and one of you goes into a care home – issues regarding income and capital

4.1 Background information on the financial assessment

Most people who have been assessed as needing a care home will be expected to pay something towards the costs of their accommodation and personal care.

² Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government

³ Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy), Welsh Government (version 2 – December 2019). A copy can be accessed on the Welsh Government website at: <https://gov.wales/advocacy-services-code-practice>

Your income, savings and other capital assets will generally be taken into account in determining how much you should contribute, though there are certain types of capital and income that can be disregarded in the financial means test; or certain *situations* where they should be disregarded.

See the rest of section 4 below for information on potential disregards that may apply where you have a partner (however, also be aware of information on *other* types of disregard – for either income or capital – which can be found in Age Cymru’s Factsheet 10w *Paying for a permanent care home placement in Wales*).

There is also a capital limit which means that capital below a certain amount is not taken into account in the means test – see sections 4.3 and 4.4 below for further information on this topic.

Note: Whilst the following sections cover some information which is general to the financial assessment process as a whole, it focuses specifically on issues which may arise if you have a partner. Again, for more in-depth information on the charging procedures overall, see Age Cymru’s Factsheet 10w.

4.2 **The Welsh Government’s guidance for local authorities on the financial means test**

If you are in a couple and one of you needs to go into a care home, it is important that you are aware of how the local authority financial assessment (‘means test’) rules work.

When conducting a financial assessment for someone who needs to go into a care home and subsequently working out what charge a service user should pay, all local authorities in Wales will need to comply with the following Welsh Government guidance document:

Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment) (version 7 – April 2023)

A copy can be accessed on the Welsh Government website at:

www.gov.wales/code-practice-charging-social-care-services

Note: Other Code of Practice documents that may be relevant, such as *Part 3 (Assessing the needs of individuals)* and *part 4 (Meeting needs)* can be found on the Social Care Wales website at:

www.socialcare.wales/hub/codes-of-practice

4.3 The capital limit in the local authority means test

The current capital limit in Wales for the care home charging means test is **£50,000**⁴.

Capital and savings of £50,000 and above

If you have capital assets and/or savings of £50,000 or more you will generally be expected to meet the **full cost** of your care home placement.

Capital and savings below £50,000

If your capital is worth less than £50,000 in total, it will be fully disregarded in the local authority means test for care home provision. **As such, you should be able to get assistance towards your care home fees from your local authority.**

4.4 The capital limit where one of a couple goes into a care home

Only the care home resident's assets should be taken into account in regard to the financial assessment (and therefore count towards the capital limit)

Where a care home resident is one of a couple, the resident must have in excess of the capital limit – £50,000 – in their own right (or their **share** of jointly owned capital must be in excess of £50,000) before the local authority can conclude that they have sufficient resources to self fund their care.

⁴ It is possible this figure may change in April 2025.

This will be the case irrespective of whether the resident's stay is permanent or temporary, or whether the other member of the couple is also a care home resident, or remains in the former home.

The Code of Practice confirms that:

When “undertaking charging only the financial means of the person being assessed can be taken into account in the financial assessment of what they can afford to pay”⁵.

Note: There can sometimes be exceptions where the local authority may be able to assess someone based on joint capital – see section 4.6 below.

4.5 Treatment of jointly owned capital where one of a couple goes to live in a care home (whilst the other remains living at home)

Property

If you jointly own your home as a couple, its value is disregarded (ignored) for the purposes of the means test, as long as the partner not entering the care home is to remain living at the property.

For further information on care home funding and the treatment of property (including jointly owned property) in a range of other scenarios – for example, if your property is to be left empty, or if someone else who is not your spouse or partner will be living there – see Age Cymru’s Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales*.

Also, see section 6 of this factsheet below, for information about what might happen should a partner wish, or need, to move away from the disregarded property.

⁵ Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 7 – April 2023).

Other capital assets (such as money in a savings account, or stocks and shares)

The Code of Practice advises that where someone holds “capital as one of a couple, the starting presumption is that each person has an equal share of each”.

This will be the case “except [in instances] where there is evidence that the [care home resident] owns an unequal share” (if this is the case, “once the person is in sole possession of their actual share, they can be treated as owning that actual amount”)⁶.

The local authority may also take into consideration whether someone has a legal right to a share in the value of an asset, even if it is not in his or her name – for example money in a savings account, or where there is an unwritten agreement between partners that they both own a property or an asset, even though the title is in only one of their names⁷.

4.6 Joint assessments of capital where it is more ‘financially advantageous’ to the care home resident

The Welsh Government’s guidance allows, in circumstances where it will be “**financially more advantageous to the person being assessed**”, for the local authority to assess the capital of a couple. A local authority “**must** only assess the capital of couples in these circumstances”⁸.

⁶ Ibid

⁷ “Where ownership [of capital] is disputed, a local authority must seek written evidence to prove where the ownership lies where [they propose to take it] into account in a financial assessment. If a person states they are holding capital for someone else, the local authority must obtain evidence of the arrangement, the origin of the capital and intentions for its future use” – *Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 7 – April 2023)*. If the person refuses to provide relevant evidence, an authority may consider that it is not satisfied that the service user has insufficient means to pay for particular services, as they claim.

⁸ *Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 7 – April 2023)*

4.7 Dividing up jointly held savings

If, as a couple, you have joint savings and one of you enters a care home it may be a good idea to divide this capital into the proportions owned by each of you **before** any fees are incurred, or before the means test takes place.

This is because where one joint account holder uses part of their share of the account to meet care fees, dividing the remainder equally will not accurately reflect the parties' true interests in it.

Example: A couple have **£125,000** in a joint savings account. One of the couple needs to enter a care home. The authority assesses the care home resident as having an equal share of the total (as discussed above in section 4.5). This would be **£62,500** – £12,500 above the current capital limit of £50,000. However, **£25,000** would have to be spent from the joint account before the overall total fell to £100,000 and, therefore, the care home resident's apparent share to £50,000.

Dividing the joint account at the outset saves the couple having to spend more capital than is necessary before the resident's assessed share falls to the capital limit.

4.8 Treatment of income received jointly where one of a couple goes to live in a care home (whilst the other remains living at home)

Similarly to jointly held capital, the Welsh Government's Code of Practice guidance advises the following in regard to joint income:

“Only the income of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. **Where this person receives income as one of a couple, the starting presumption is that each person has an equal share of that income**” (emphasis added)⁹.

⁹ Ibid

4.9 Joint assessments of income where it is more ‘financially advantageous’ to the care home resident

Also, in a similar way to capital, there is some scope for a local authority to conduct the financial means test based on the “joint income of the couple”, but only:

- “where the couple *agree* to declare their joint resources; *and*
- the result of [conducting the assessment this way] is **financially more advantageous to the person being assessed**”¹⁰ (emphasis added).

In other words, the ‘default position’ of there being a 50/50 split in the share of a couple’s income can sometimes be looked at differently by the authority, with 100% of the joint income included in the assessment, **but** this can *only* happen where this approach results in a more beneficial financial outcome for the care home resident.

4.10 Income from welfare benefits – possible changes in eligibility due to a care home placement

Due to the changes in circumstances for both members of a couple, if one needs to move to a care home, entitlement to a range of benefits may be affected (be this eligibility ceasing, changing, or someone becoming eligible for the first time).

- If you are the person who will be entering a care home, then Age Cymru’s Factsheet 10w *Paying for a permanent care home placement in Wales* contains further details of how going to live in the care home may affect benefit entitlement.
- If you are the member of a couple who will remain living at home, then you may wish to get a benefit check with your local Age Cymru, or other advice agency – see section 11 below for contact details.

¹⁰ Ibid

Note: If you claim Pension Credit

If you are a couple and one of you goes into a care home on a permanent basis, the Department for Work & Pensions (DWP) will treat you as **two separate individuals** for the purposes of assessing eligibility for Pension Credit (PC). PC is means tested. Eligibility is based on income and capital and your age – see Age UK's Factsheet 48 *Pension Credit* for further information.

For both the resident and the person remaining at home, eligibility for the benefit will depend on the level of their *individual* income and capital. Any jointly owned capital will be divided.

4.11 Occupational pensions, private pensions or annuities received by the care home resident – 50% disregard where income from these sources is passed to their spouse at home

Often one of a couple has a significantly larger income than the other. The rules set out below can reduce the likelihood of the other person experiencing financial hardship if the main income holder goes into a care home.

Couples who are married or have a civil partnership

Where one of a couple who are married or have a civil partnership enters a care home, 50% of that person's occupational (works) pension, personal private pension or payment from a retirement annuity contract can be passed back to the person remaining at home.

The 50% passed back is **disregarded (ignored)** in the means test when calculating how much the resident can pay towards their care home fees. This rule exists in the charging guidance to ensure that a spouse or civil partner, who remains at home, is able to meet their living costs.

However, the 50% disregard only applies where:

- the resident actually *does* pass half of his/her occupational or private pension/retirement annuity income to their spouse or civil partner (if the resident has more than one such source of income, it must be 50% of the total income from these sources); **and**
- the spouse or civil partner lives anywhere other than in the same care home as the resident.

The disregard does not apply to:

- partners who are neither married nor civil partners (however, see section 4.12 below if you are in this situation); *or*
- residents who pass an amount **less** than 50% of their relevant income to their spouse or civil partner.

Note: The resident is **not obliged** to pass this money back to the spouse; it is just that the disregard can only be applied if they are doing so.

Changes in circumstances

Certain changes will mean that the disregard will come to an end. For example, this will be the case where:

- the couple divorce or end their civil partnership;
- the other person moves to live in the same care home as the resident; *or*
- the resident dies.

A care home resident's eligibility for welfare benefits and the 50% disregard

The Department for Work and Pensions (DWP) does **not** recognise this partial disregard rule for local authorities and will therefore assess the resident's eligibility for Pension Credit as if this money was still available to them – i.e. the DWP will count 100% of a private pension belonging to a care home resident as income that they have, even if 50% is passed to his/her spouse.

Note: As such, the local authority should adjust the resident's assessed contribution towards their care home fees to take account of any resulting shortfall in benefits income.

Possible implications for the person remaining at home of receiving the extra income

The person eligible to receive the disregarded income may not be in a better position if they do so – for example, it may affect entitlement to means-tested benefits such as Pension Credit, Housing Benefit or help available from their local authority's Council Tax Reduction Scheme.

If you're unsure whether receiving this money will leave your spouse better off, seek advice from one of the agencies listed below in section 11.

What if someone's finances are being managed on their behalf?

If someone else is managing the resident's finances under a Lasting Power of Attorney (LPA), or has been appointed a deputy by the Court of Protection (CoP), the attorney/deputy can usually decide whether to pass any private pension income back to a spouse or civil partner, including situations where the attorney/deputy is the person who will receive the money.

An exception will be if the donor has imposed specific restrictions or conditions in the Power of Attorney preventing this (or the CoP has done so).

See Age UK's Factsheet 22 *Arranging for someone to make decisions on your behalf* for more detailed information.

4.12 Increasing the Minimum Income Amount (MIA) – to enable a care home resident to make some of their income available to a partner at home

Note: The Minimum Income Amount (MIA) is money that all care home residents, who are receiving help towards their fees from the local authority, are allowed to retain each week, once they have made their contribution towards the overall care home fee.

The MIA is currently **£43.90 per week** (though it may change again in April 2025).

The rest of this section looks specifically at a discretionary power that local authorities have to vary the MIA above the standard level and how this may help certain couples, where one person goes into a care home. For information on the MIA in general, including other scenarios where the local authority may apply its discretionary power to increase the MIA, see Age Cymru’s Factsheet 10w *Paying for a permanent care home placement in Wales*.

Local authorities have a discretionary power to apply a higher MIA than the standard set level discussed above. In deciding whether to do this, the authority should look at each person’s individual circumstances. The Code of Practice guidance confirms that authorities should consider using this discretion for “unmarried couples” where the care home resident wishes to pass half their “occupational or personal pension or retirement annuity” to their partner (so long as they are not living in the same care home)¹¹.

In other words, this can be particularly helpful for couples who are neither married nor civil partners (and so are not covered by the automatic 50% disregard set out above in section 4.11), but through the discretionary power, can effectively be offered the same facility as those who are married.

As it is a discretionary power, the authority does not have to agree, but should properly consider the request. If you feel they haven’t done this, you could use their complaints procedure if necessary – see section 9 below.

¹¹ Ibid

If the partner is receiving certain welfare benefits

As with married couples and the automatic disregard, any of the care home resident's pension money passed back to their partner may affect the partner's eligibility for means-tested benefits. If they currently receive any such benefits, it will be worth checking whether they will in fact benefit from receiving some of the resident's income in this way.

4.13 Use of joint assessment forms in the financial means test

Local authorities should not generally use joint assessment forms that ask for details of both partners' finances. However, authorities may ask for details of your partner's finances on a separate form for the purposes of ensuring that they will not be left without sufficient resources to live on when you go into a care home. Also, see sections 4.4 to 4.12 above.

4.14 Temporary care home stays where the resident is one of a couple

Couples who receive Pension Credit

When assessing how much a temporary resident should contribute, local authorities should carefully consider the needs of couples who receive Pension Credit. If as a couple you receive Pension Credit and one of you enters a care home for a temporary stay, it will continue to be paid as if you were **both still at home**. The local authority will usually apportion the amount of Pension Credit Guarantee Credit paid in order to:

- *where the care home resident is the claimant* – ignore the amount paid in respect of the partner at home; or
- *where the partner at home is the claimant* – request an amount to be paid as part of the temporary resident's contribution towards their care costs.

Household expenses

While a resident's stay in a care home is temporary, allowance should be made for some household expenses.

If the local authority allows a single person's rate for the person remaining at home when apportioning the Pension Credit Guarantee Credit, they may expect that household expenses are shared equally and therefore only allow for half the expenses.

This allowance may reduce further if there are other non-dependant adults living in the household who could be expected to contribute to the household expenses.

Note: Age Cymru's Factsheet 58w *Paying for temporary care in a care home in Wales* has more detailed information on this topic.

5 The local authority financial assessment when a couple both go into a care home

5.1 The capital limit – the couple should be assessed as individuals

The local authority has to assess you as individuals regardless of whether you go into the same home together.

You should be means tested *separately* based on your own capital and income (including your share of any jointly held assets).

As such, the capital limit – **currently £50,000** – will apply to you both individually (for example, if you had £60,000 in joint savings, when it came to your individual means tests for meeting the cost of your care home, you would each be assessed as having £30,000 and thus, assuming that you didn't have any other savings or assets, your capital would be below the capital limit).

5.2 If you claim Pension Credit

In most cases a couple who **both enter a care home** on a permanent basis will be treated as two *separate individuals* in *separate households*, even if they share a room in the same care home.

The Department for Work & Pensions (DWP) will look at your particular circumstances before deciding whether to treat you as two individuals or a couple (classed as living in the same household).

The DWP publishes a *Decision makers' guide*. It states that whether members of a couple are members of **the same household** is “a question of fact and degree”. Decision makers are given examples of what it would be useful to consider in deciding whether there is a household. These include:

- Structure of days – do the couple decide “at what time to get up, have meals, go to bed, etc”?
- How the accommodation they live in is to be arranged – “do they decide which room is to be the dining room, the living room, etc”?
- “Can they decide who can come and stay with them, and for how long”?
- “Can they insist that other people do not enter their accommodation without permission”?
- “Can they decide the decor and furnishing of their accommodation”?
- “Do they have some facilities for preparing food and making tea, coffee and other hot drinks”?
- “Do they have responsibility for running the household” – e.g. “are they responsible for getting repairs done, replacing domestic appliances or buying food”¹²?

In terms of the Pension Credit rules, if there is no household, there cannot be a common household and, as such, two separate ‘benefit units’ – each with a single claimant – will exist. Seek advice if you are treated as a couple in this situation.

¹² Decision makers' guide: Vols 13 and 14: State Pension Credit: staff guide (Vol 13 Ch 77: Conditions of entitlement, membership of the household and normal amount payable), Department for Work and Pensions. Available on the GOV.UK website at: www.gov.uk/government/publications/decision-makers-guide-vols-13-and-14-state-pension-credit-staff-guide (last accessed 25 June 2024).

If you go into **different homes** – or live in different *sections* of the same home, there should be no problem arguing that you should be treated as two separate individuals (for example, this scenario may occur where both members of a couple go into a care home, but have different levels of needs, so one may be in a section of the home that can provide accommodation and help with personal care only; whilst the other may have a room in a separate part where accommodation, personal care and nursing care are offered).

The DWP's guidance contains the following three examples:

● **Bill and Agnes**

“Bill and Agnes are husband and wife. They move into a care home when they become too infirm, physically, to look after themselves. They share rooms furnished with their own furniture and other people need permission to enter those rooms. They have their own television set and telephone. They choose to have their evening meals in the communal dining room and have to pay extra for those meals. But they prepare all other meals in their own small kitchen and eat them in their own dining area”.

“Bill and Agnes are members of the same household”.

● **Liam and Mary**

“Liam and Mary are husband and wife. Liam has had a severe stroke and Mary has heart problems and arthritis. Liam needs more care than Mary can give him so he goes into a care home. Two years later Mary goes into the same care home because her health has deteriorated”.

“She and Liam have **separate** rooms and are billed **separately** by the home. Liam and Mary are **not** members of the same household [as] they do not have a domestic establishment in the care home”.

● Pierre and Annette

“Pierre and Annette are husband and wife. Both suffer from...dementia and go into a care home to be cared for. Although they share a room, they do not understand that they are husband and wife. They are each billed separately by the nursing home”.

“**Pierre and Annette are not members of the same household**”¹³.

6 When a partner wants to move from a jointly owned property

As mentioned above in section 4.5 when one of a couple enters a care home on a permanent basis the local authority has to disregard the resident’s interest in their former home for as long as the other spouse or partner remains there.

However, the partner or spouse may at some point wish to move from that property, perhaps to somewhere smaller and more manageable. Once the original property has been sold, the disregard ends and the resident’s share of the proceeds could be taken into account in the financial assessment.

Previous government guidance indicated that it was acceptable practice for the care home resident to make part of their share of the proceeds from a sale of the property available to their spouse or civil partner, so long as this was to enable them to purchase a more suitable home for themselves¹⁴.

Furthermore, authorities were advised that it would *not* be reasonable for them to treat a resident as having deprived themselves of capital on purpose if they used their funds from the sale in this way (see Age Cymru’s Factsheet 40w *Deprivation of assets in the means test for care home provision in Wales* for further information on this topic).

¹³ Ibid

¹⁴ Unmarried partners and other relatives on whose account the original property had been disregarded could also ask to be treated in the same way as a spouse by the authority if they wished to move.

The current charging guidance – *Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment)*, Welsh Government (version 7 – April 2023) – does **not** appear to comment on this issue, though you could suggest to the authority that similar principles should continue to be followed¹⁵.

Note: Discuss this issue with the local authority prior to taking any action or making any firm decisions. You could also consider obtaining specialist legal advice on this potentially complex issue (though it's a good idea to ask about fees at the outset).

You would need to ensure that any solicitor you choose has specialist knowledge of the law around social care. Age UK's Factsheet 43 *Getting legal and financial advice* has further information on obtaining legal advice and finding solicitors.

7 The issue of couples being split up when care home accommodation is needed

When one of a couple moves into a care home, it can be a difficult change of circumstances for both the person moving into the care home and also the partner who remains living at home, but without the other person.

Sometimes, the spouse or partner who is to remain living at home might decide that they would actually wish to move into the care home too, so as not to be separated. This may be possible if they have care needs themselves, though if they only have low level needs a care home may be deemed as not suitable (alternatively, if one partner's needs are a lot greater than the other, even if they both needed a care home, the same care home might not be suitable for both, depending on the type of care home and the sort of care it might specialise in).

¹⁵ The current – and previous – guidance also doesn't address related issues, such as how any funds left over after the purchase should be apportioned (between the resident and their partner), or whose name the new property should be put into.

7.1 A human rights angle: case study

Mr and Mrs Driscoll had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and reported that she used her husband as her eyes. Mrs Driscoll wanted to move to the care home with her husband, but was told she did not meet the criteria used by the local authority to allocate places and, as such, could not join her husband. Mrs Driscoll commented at the time:

“We have never been separated in all our years [and] I am lost without him – we were a partnership.”

“It was argued that the local authority had breached the couple’s right to respect for family life [under *Article 8* of the European Convention on Human Rights]. After much campaigning, supported by various human rights and older people’s organisations, the authority later allowed Mrs Driscoll to join her husband”¹⁶.

Note: Article 8 of the European Convention on Human Rights is a protected right in UK law via the *Human Rights Act 1998*.

For further information on the Human Rights Act in general, see the **Equality and Human Rights Commission** website at:

www.equalityhumanrights.com/en/human-rights/human-rights-act

Also see section 10 of this factsheet below, which has related information on equality, discrimination and human rights.

If you are affected by a situation similar to the above, you could contact the *Equality Advisory & Support Service* for further information.

Alternatively, speak to your local Age Cymru (or other similar advice organisation) for advice or support – see section 11 below for contact details.

¹⁶ ‘Seven important ways Human Rights laws are protecting older people’, 15 June 2016, EachOther website: <https://eachother.org.uk/human-rights-protect-elderly-people> (last accessed 25 June 2024).

7.2 Social care needs assessments and the ‘maintenance of family or other significant personal relationships’

When someone has a care assessment a number of factors are examined and taken into account. For example, in addition to considering the level of help someone needs for personal care activities (e.g. dressing or bathing), or to achieve or maintain “a reasonable standard of health”¹⁷, the local authority also needs to consider someone’s ability to maintain “family or other significant personal relationships”.

Furthermore, the authority’s analysis of needs shouldn’t be considered in isolation, but in the context of “the effect that the needs have on the person or family concerned and/or by reference to the person’s [unique] circumstances”¹⁸.

Therefore, the *Social Services and Well-being (Wales) Act* (and its accompanying Code of Practice guidance) would also seem to offer some elements that people can request the authority consider – if they are couples in the sort of scenario outlined at the beginning of this section – when meeting the care home resident’s needs and that, in doing so, the person is still able to maintain important family relationships.

For further information on the various elements that should be considered when assessing people’s needs and subsequent care plan, see Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales*.

¹⁷ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

¹⁸ Ibid

8 Managing financial affairs or other decisions on someone's behalf – for example, if a person has lost mental capacity

8.1 Appointeeships for benefits

If a person receiving social security benefits is unable to manage his or her affairs, the Secretary of State for Work and Pensions (through the local social security office) can appoint someone else to exercise the right to make claims and receive benefit on behalf of the claimant (the person in the care home).

An appointee would normally be a close friend or relative who visits the older person regularly. The local authority may also be an appointee or, as a 'last resort', the owner or manager of the care home (however, in such cases he or she must keep a record of the money collected on the person's behalf).

An appointee's responsibilities **only** cover social security benefits. The claimant and the prospective appointee will be interviewed by the Department for Work and Pensions before any appointment is made.

8.2 Legal arrangements for looking after someone else's financial affairs and/or welfare and healthcare – Lasting Power of Attorney (LPA) or the Court of Protection

Lasting Power of Attorney (LPA)

Whilst someone is able to make their own decisions, they can make a legal arrangement for the future in regard to how they would like their affairs dealt with, were they to lose the mental capacity to do this for themselves.

This is done by appointing an attorney through setting up an **LPA**. There are two types of LPA:

- A property and affairs LPA that gives the person/people you appoint as your attorney the authority to make decisions about your financial affairs on your behalf.
- A personal welfare LPA that gives the attorney authority to make decisions about your healthcare and personal welfare on your behalf.

An important distinction between the two types is that a property and affairs LPA can be used by the attorney even when you still have mental capacity to make your own decisions, whereas a personal welfare LPA can only be used if you have lost capacity to make the relevant decisions yourself.

Note: An attorney acting for someone via an LPA must act in accordance with important principles contained in the ***Mental Capacity Act 2005*** (MCA) and an accompanying *Code of Practice*. Age UK's Factsheet 22 *Arranging for someone to make decisions on your behalf* has more detailed information on LPAs and the principles of the MCA.

The Court of Protection

If someone can no longer manage their own affairs due to reduced mental capacity and did not grant an LPA prior to this, then it will **no longer be possible to pursue this option** – an application to the *Court of Protection (COP)* will probably be necessary instead, in order for someone to deal with their affairs on their behalf. The Court of Protection has the power to appoint a 'deputy' (usually a family member or friend) who will make decisions in a person's best interests, where they did not set up a Lasting Power of Attorney (LPA) at a time when they still had capacity.

Again, see Age UK's Factsheet 22 *Arranging for someone to make decisions on your behalf* for further information.

9 Disputing a decision or making a complaint

If you do not agree with a decision made by a local authority in regard to your care needs assessment, service provision and/or the result of their financial means test, you can request to have the decision reviewed and, if necessary, use their complaints procedure.

Age Cymru's Factsheet 59w *How to resolve problems and make a complaint about social care in Wales* has further information on this topic, including:

- local authority social services complaints procedures and how they should operate;
- how to submit a complaint;

- what to expect when you do;
- information on organisations that may be able to assist you to make a complaint (such as Llais – a body that represents the voices and opinions of the public in regard to social care and health services); *and*
- the Public Services Ombudsman for Wales (who you may be able to elevate your complaint to if the local authority’s response is not satisfactory).

10 Equality, discrimination and human rights

The *Equality Act 2010* prohibits discrimination relating to certain ‘protected characteristics’ that people may have.

What is discrimination?

The Equality and Human Rights Commission describes discrimination as:

- treating one person worse than another because of a protected characteristic (known as direct discrimination); *or*
- putting in place a rule or policy or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified (known as indirect discrimination).

Protected characteristics

The protected characteristics under the *Equality Act 2010* are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; *and*

- sexual orientation.

Under the Act it is unlawful to discriminate against someone in the provision of goods and services unless a practice is covered by an exception from the ban, or good reason can be shown for the differential treatment, known as '**objective justification**'.

There are no specific exceptions to the ban on age discrimination for social care services. This means that any age-based or related discriminatory practices by the local authority or social care organisations must be able to be objectively justified to ensure their legality.

Disability and 'reasonable adjustments'

The 2010 Act says that service providers, such as care homes, must take reasonable steps to remove any barriers you might face to accessing their services because of your disability. This can relate to policies or practices or the physical environment if this causes a barrier to access.

You may need particular adaptations or equipment to help you, or additional services such as extra staff assistance. There may be a requirement for an auxiliary aid and services, for example, a portable induction loop with hearing aids, a British Sign Language interpreter or provision of information in Braille or an audio format.

Whether an adjustment is reasonable depends on the size and resources of the organisation and type of service they provide. It also depends on what changes or adjustments are needed and how practicable or easy it is to do them. Whether something is reasonable or not is decided in court cases brought under the 2010 Act.

Public Sector Equality Duty

The Public Sector Equality Duty requires all public bodies, such as local authorities, to have due regard to the need to eliminate discrimination; advance equality of opportunity, plus foster good relations between protected groups.

This can relate to a policy that appears to apply to everyone in the same way, but, because you have one of the protected characteristics, it puts you at a particular disadvantage.

The Equality and Human Rights Commission

The Equality and Human Rights Commission has a range of general enforcement and investigation powers. They can provide assistance to individual litigants in legal proceedings concerning equalities legislation.

The Equality Advisory & Support Service website has further information – see section 11 below.

The Human Rights Act 1998

This act sets out a number of basic rights that cover issues such as:

- a right to life;
- a right to privacy; *and*
- rights to home and family life.

Most of these rights are qualified and not absolute. This means some rights can be interfered with in certain circumstances set out in the Article itself. Any such interference must be legal, necessary and proportionate to your individual circumstances.

It is useful to be aware how these rights may relate to issues such as:

- poor treatment in a care home;
- being placed in a care home a long way from other social support; *and/or*
- being separated from your partner.

Note: In the context of local authority complaints, it can be useful to show you are aware of human rights laws and principles in terms of your local authority's duties and, if appropriate, relate your situation to one or more of the Articles in the Act.

Commonly used articles in the Act include:

Article 2 – *the right to life*; Article 3 – *the prohibition on inhuman and degrading treatment*; Article 5 – *the right to liberty*; Article 8 – *the right to respect for private, family and home life*; Article 14 – *prohibition on discrimination (in relation to the enjoyment of other Convention rights)*.

Further information

The following factsheets may also be useful:

- Age Cymru's Factsheet 59w *How to resolve problems and make a complaint about social care in Wales*;
- Age UK's Factsheet 79 *Equality, discrimination and the Public Sector Equality Duty*.
- The **Equality Advisory & Support Service** website is a useful signpost in regard to this topic – see section 11 below.

Note: Also see section 7 above which has an example of how a human rights approach was successfully taken in regard to a couple who were at first told they couldn't live together when one of them needed to go into a care home.

11 Useful organisations

Age Cymru Advice

Free and confidential information and advice on matters affecting the over 50s in Wales.

Tel: 0300 303 44 98

E-mail: advice@agecymru.org.uk

Website: www.agecymru.org.uk/advice

Age Cymru organisations (local)

Your local Age Cymru may be able to provide advice and support on a range of issues. **Age Cymru Advice** can provide details of your local Age Cymru (see above), or visit the Age Cymru website at:

www.agecymru.org.uk/local

CareHomes.Wales

This website is run by Data Cymru (a Welsh local government company with a Board of Directors elected by the Welsh Local Government Association). All care homes for adults in Wales should be listed on the site, with basic information updated directly from the Care Inspectorate Wales (CIW) on a weekly basis. Information will be listed of the type of care provided, contact details for the home, plus links to the most recent inspection report. You should also be able to see if the home has any vacancies.

E-mail: support@CareHomes.wales

Website: www.carehomes.wales

Care Inspectorate Wales (CIW)

CIW inspects and regulates care and social services in Wales.

Tel: 0300 7900 126

E-mail: ciw@gov.wales

Website: www.careinspectorate.wales

Carers Wales

A charity providing information, advice and practical and emotional support for carers.

Tel: 029 2081 1370

E-mail: info@carerswales.org

Carers UK Helpline: 0808 808 7777

Website: www.carerswales.org

Citizens Advice

National network of free advice centres offering confidential and independent advice, face to face or by telephone.

Tel: 0800 702 2020

Details of your nearest CAB can be found at:

www.citizensadvice.org.uk/wales

Dewis Cymru

This is a website owned and funded by local authorities across Wales. The site was set up by the Welsh Government to assist in the delivery of certain provisions in the *Social Services and Well-being (Wales) Act*. The Dewis Cymru site contains an extensive database of a wide variety of services that can help people with their well-being.

www.dewis.wales

Equality Advisory & Support Service

A helpline that can advise people on equality and human rights issues.

Tel: 0808 800 0082

Website: www.equalityadvisoryservice.com

Llais

A body that represents the voices and opinions of people in Wales in regard to health and social care services.

Tel: 029 20 235558

E-mail: enquiries@llaiscymru.org

Website: www.llaiswales.org

Contact details for your local Llais team: www.llaiswales.org/in-your-area

Older People's Commissioner for Wales

Independent champion for older people across Wales.

Tel: 03442 640 670

E-mail: ask@olderpeople.wales

Website: www.olderpeople.wales

Public Services Ombudsman for Wales

The Ombudsman looks to see whether people have been treated unfairly or have received a bad service from a public body, such as a local authority or the NHS. People who fully self-fund their care also have the right to escalate a complaint about those services to the Ombudsman.

Tel: 0300 790 0203

E-mail: ask@ombudsman.wales

Website: www.ombudsman.wales

Welsh Government

The devolved government for Wales.

Tel: 0300 060 4400

E-mail: customerhelp@gov.wales

Website: www.gov.wales

12 Further information about Age Cymru

12.1 Who we are

Age Cymru is the national charity for older people in Wales. We work to develop and deliver positive change with and for older people.

Together with our local partners:

- we provide information and advice;
- we deliver wellbeing programmes;
- we provide independent advocacy;
- we support carers; *and*
- we campaign and research.

Age Cymru

Mariners House
Trident Court
East Moors Road
Cardiff
CF24 5TD

029 2043 1555

www.agecymru.org.uk

Registered Charity 1128436

12.2 How we can help

Age Cymru Advice: our information and advice service for matters affecting people over 50 in Wales

Age Cymru Advice is committed to being the foremost information and advice service to older people in Wales. We aim to provide effective, accessible, high-quality information and advice while offering a free, impartial and confidential service. Age Cymru Advice can assist older people themselves, their family, friends, carers, or professionals.

All of our guides and factsheets are available to download from our website, or you can contact our advice line to have copies posted to you for free.

Local support

Age Cymru Advice also acts as a gateway to our local services. Face to face support via local offices and home visits may be available to people requiring additional or more specialised support.

Getting in touch

If you want to talk to one of our expert advisers, in Welsh or English, call us on **0300 303 44 98**. Our advice line is open between 9am and 4pm, Monday – Friday.

(Calls are charged at the same rate as a call to a standard 01 or 02 number. They will also be automatically included in any landline or mobile inclusive minutes package).

You can also:

- email us at advice@agecymru.org.uk; *or*
- visit our website at www.agecymru.org.uk/advice



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www.agecymru.org.uk/agematters

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12.3 How you can help

All the information and advice we provide is free and completely impartial. In many cases our timely intervention can be life changing. We are an ageing population and more people than ever are coming to us for support. You can help us be there for those that need us most.

Make a donation

No matter how small or large, donations make a massive difference and help us continue our important work.

Call: **029 2043 1555**

Visit: **www.agecymru.org.uk/donate**

Every donation we receive helps us be there for someone when they need us.

- £10 helps towards a fully trained expert advice worker to respond to queries from people who need the support of our information and advice service.
- £20 helps towards the cost of us producing free information guides and factsheets that provide useful advice on issues affecting people over 50.

Fundraise

Whether it is having a bake sale, running a marathon or knitting small hats for the Big Knit, there are so many ways to raise vital funds to support our work.

Call: **029 2043 1555**

Visit: **www.agecymru.org.uk/getinvolved**

Volunteer with us

All volunteer roles at Age Cymru support us to improve lives. However you'd like to get involved, we'd love to hear from you.

Call: **029 2043 1555**

Visit: **www.agecymru.org.uk/volunteer**

Leave us a gift in your will

With a gift to Age Cymru in your will, you can do so much to make sure older people have the support they deserve in the years to come. Leave a world less lonely.

Call: **029 2043 1555**

Visit: **www.agecymru.org.uk/legacy**

