

## Factsheet 10

# Paying for permanent residential care

April 2017

### About this factsheet

This factsheet provides information about the financial help that may be available from your local authority if you need care in a care home. It also covers arranging and paying for care yourself.

You may find it helpful to read other Age UK factsheets on residential care funding and social care service provision, and on free NHS continuing healthcare, which may involve residential care provision.

The information in this factsheet is correct for the period April 2017 – March 2018. Benefit rates are reviewed annually and take effect in April but rules and figures can sometimes change during the year.

The information in this factsheet is applicable in England. If you are in Scotland, Wales or Northern Ireland, please contact Age Scotland, Age Cymru or Age NI for their version of this factsheet. Contact details can be found at the back of this factsheet.

Contact details for any organisations mentioned in this factsheet can be found in the Useful organisations section.

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## 1 Recent developments

This factsheet is based on the *Care Act 2014* and supporting regulations and statutory guidance, introduced in April 2015.

*Local Authority Circular (DH)(2017) 1*, published in January 2017, kept all the figures and financial thresholds for charging for care and support at the same levels as the previous financial year.

## 2 Explanation of terms used

### Care homes and nursing homes

This factsheet provides information about '*care homes*' and '*nursing homes*'. These are standard terms used by the Care Quality Commission, the industry standards regulator. Nursing homes are care homes where a nurse must be present to provide or supervise medical-type care alongside basic personal care. We use '*care home*' in this factsheet unless discussing something to do with a nursing home.

### Charging regulations and statutory guidance

There are references to the charging regulations and statutory guidance that support the *Care Act 2014* ('*the Act*') throughout this text. These set out how a local authority must administer adult social care. These include the *Care and Support (Charging and Assessment of Resources) Regulations 2014* ('*the charging regulations*').

The other main reference source is the *Care and Support Statutory Guidance 2014* ('*the statutory guidance*'). Section 8 covers '*Charging and financial assessment*' and the Annexes include:

- Annex B: Treatment of capital
- Annex C: Treatment of income
- Annex E: Deprivation of assets

### Local authority

In this factsheet, references to a '*local authority*' refer to the adult social services department of the local authority or council. It is also used to describe similar departments within: a county council, a district council for an area in which there is no county council, a London borough council, or the Common Council of the City of London.

### Capital

Capital takes many forms, but it generally refers to money you own that may be available to fund part, or all, of meeting your assessed needs. It can be buildings or land, savings or stocks and shares or trusts. It is not regular payments of income, such as pensions or benefits.

### 3 How to obtain help from your local authority

If you need residential care, your local authority may have a duty to arrange it once it has assessed your needs. You are likely to have to pay something towards fees from your capital or income, or both. If the local authority is involved in arranging your placement, the amount you have to pay is worked out via a financial assessment (also known as a means-test) based on national guidelines. The procedure for paying for residential care is explained in this factsheet.

See section 16 for your potential right to free residential care provision via the NHS.

#### Note

If you have more than £23,250 in capital, your local authority will not make any contribution towards your fees.

#### 3.1 Assessment of needs

Your local authority must first carry out a needs assessment to establish if you require residential care before it helps you with the cost. If you have needs for care and support, they must assess you, regardless of your financial situation. One way of meeting your assessed needs is provision of '*accommodation in a care home or in premises of some other type*' (Section 8, the Act).

Prior to a care home recommendation, all other options allowing you to stay at home should be considered or tried, if this is what you want. Other accommodation may be suitable such as warden controlled or extra care sheltered housing and you should be told about possible options in your assessment.

The needs assessment results in a care and support plan containing various elements including your personal budget. This is the amount your local authority calculates it should pay to meet your eligible needs after your financial assessment. Eligible needs are needs that meet the criteria for adult social care service provision.

The authority has a duty to ensure these needs are met so it must recommend the best way to do this. Your care and support plan documents your right to have your eligible needs met by your local authority. You should be given a copy. Sometimes, your local authority has discretion, or choice, whether to assist meeting your needs.

If your care is arranged by the local authority or the NHS, you do not have a formal contract but you should be given a statement of terms and conditions and who you can complain to if you are dissatisfied. This should form part of your care and support plan.

If a local authority carries out a needs assessment and is not required to meet your needs, it must give you a written record of the decision and the reasons for it. This could be because you do not have eligible needs or because the financial assessment finds you would have to pay the full amount and you can either arrange to meet your own needs or you have support to do this in a safe and appropriate manner. Your local authority also has a duty to provide any necessary information and advice. This is particularly important if you are found to be ineligible for care and support provision from them and need to arrange it yourself.

See factsheet 41, *How to get care and support*, for more information.

### Note

See section 17 if you fund your residential care independently through choice or due to your local authority financial assessment.

## 4 The financial assessment

The financial assessment (*'means test'*) is how the local authority calculates how much you must contribute to your care home fees, when arranged by the local authority. Your income and capital can be taken into account. The care home fee level depends on the assessment of your needs and the recommendation to meet them.

### A 'sufficient' personal budget and choice

The terms *'usual cost'* or *'standard rate'* may be used in your financial assessment. They are the maximum limit your local authority usually expects to pay for residential care to meet your assessed needs. These vary from area to area and for different types of care or nursing home.

Your personal budget must be sufficient to meet your eligible needs. In practice, your personal budget relates to the usual cost of the type of residential care in your area. The local authority must offer at least one choice to you at this cost.

Any additional payments, known as *'top-up'*, must always be optional and never due to commissioning failures leading to a lack of local choice.

It should be possible for your personal budget to be increased in certain circumstances to meet specific needs, or if there is inadequate local supply to meet your needs.

### Only your own resources should be considered

Local authorities cannot generally assess joint resources of couples. They can only look at your own capital and income. This includes income and savings in your sole name. Jointly held savings are usually divided equally in the financial assessment. The exception is jointly owned property where your actual share or beneficial interest must be taken into account.

## **‘Light touch’ means test**

Statutory guidance allows for *‘light touch’* financial assessments. This could be because your local authority is satisfied that your financial resources do, or do not, exceed financial limits, for example because you receive certain key benefits, or you own a property with no mortgage. You must be asked to consent to a *‘light touch’* assessment and it should be appropriately processed and recorded.

## **A written record of the charging decision**

You must be given a written record of your charging decision by the local authority (section 17(6) of the Act). It should explain how the assessment was carried out, what the charges will be, how often they are made and the likelihood of fluctuations in charges. It should be provided in a way you can easily understand as early as possible.

# **5 Your savings and other types of capital**

Most forms of capital are included in your financial assessment, including savings, bank or building society accounts, National Savings accounts, Premium Bonds, stocks and shares, and property (buildings or land). See factsheet 38, *Property and paying for residential care*, for more about how the value of your home is taken into account and the possibility of deferred payments so that you can retain it.

## **5.1 General points about treatment of capital**

### **Valuation of capital**

If your capital is valued at more than £23,250, no precise valuation is needed because you are expected to pay the full fee yourself. Capital either has a market value – the amount a willing buyer would pay (e.g. for stocks and shares), or a surrender value (e.g. Premium Bonds).

Any outstanding debt secured against an asset, such as a mortgage, is deducted from the value. If, in order to realise an asset, you would incur expenses through selling it, then 10 per cent is deducted from the capital value for the purposes of the financial assessment.

Compensation payments due to be made for losses due to regulatory failure for policy holders with Equitable Life are regarded as capital if paid as a lump sum or as income if paid as a regular payment.

### **If you have more than £23,250**

You are expected to pay the full care home fee (self-fund) until your capital reduces to the upper capital limit, £23,250, at which time the local authority may have to assist you with funding.

### **If you have between £14,250 and £23,250**

Capital between £14,250 and £23,250 is assessed as if you have an assumed (or 'tariff') income. For every £250 or part of £250 above £14,250, you are treated as if you have an extra £1 a week income.

#### **Example**

If you have capital of £14,550 you are treated as having £2 a week income (two lots of £250). Make sure this is reviewed when your capital drops down to the next £250 'band'.

### **If you have below £14,250**

Capital less than £14,250 is fully disregarded for charging purposes.

#### **Other disregarded capital**

Certain capital is partly or fully disregarded in your financial assessment on a permanent basis. This includes the surrender value of life insurance policies or annuities; and funds held in trust or administered by a court that can only be disposed of by a court order or direction and which derive from personal injury payments, including compensation for vaccine damage and criminal injuries. There are temporary disregards, for example, personal injury payments are disregarded for 52 weeks.

Treatment of money held in trust depends on your rights to demand the trust money be paid to you. The rules are complicated so seek advice from the trust provider.

Certain types of investment bond with life assurance elements are disregarded. If you are unsure whether a bond has a life assurance element, ask the company that issued the bond or your financial adviser. Age UK cannot advise on particular financial products.

£10,000 compensation payments made to Far East Prisoners of War on or after 1 February 2001 are disregarded. Payments made to people who caught hepatitis C as a result of contaminated blood products are disregarded, as well as payments related to Creutzfeldt-Jakob disease.

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

If your home is included in your financial assessment, it is disregarded for the first 12 weeks of your care home placement if it is permanent. This is to allow you time to sell the property or possibly arrange deferred payments with your local authority allowing you to retain it.

#### **Note**

Personal possessions are disregarded as long as they were not bought with the intention of avoiding residential care charges.



## Jointly held capital

If you jointly hold capital (e.g. savings) with another person or people, you and other owners are usually treated as having equal interests in it.

The exception is for jointly owned property, which must be calculated in terms of the present sale value of your beneficial interest. This is the part you own that could be sold with the proceeds of sale going to you. See factsheet 38, *Property and paying for residential care*, for more information.

### Note

If you have a joint bank or building society account, you are usually assessed as having half of the balance. It is worth dividing joint accounts so that each person holds their money separately, to ensure it is accurately taken into account when paying fees.

## Notional capital

This is capital that is included even though you do not have it. For example, it could be funds available on request, such as an unclaimed Premium Bond win or capital disposed of to avoid using it to pay for residential care. If you have been assessed as having notional capital, its value must be reduced on a weekly basis by the difference between the weekly rate you are paying for residential care and the weekly rate you would have paid if notional capital did not apply.

## 6 Deprivation of assets

If you give away assets or dispose of them in order to put yourself into a better position to obtain local authority help with care home fees, you may be assessed as if you still have the assets. Deliberate deprivation can be found for both capital and income.

A local authority can use discretion (choice) when assessing the timing and motive for the transfer of eligible capital prior to a financial assessment. It is important to be aware that eligible assets can sometimes be disposed of for justifiable reasons. The local authority must genuinely consider all the circumstances in question and be able to explain their decision.

For more information see factsheet 40, *Deprivation of assets in social care*.

## 7 Your income

Your income can be included in your financial assessment. It is usually looked at on a weekly basis and taken into account in full, unless specifically identified as being fully or partly disregarded.

The local authority make their calculations on the basis that benefits income such as Pension Credit is being claimed, so it is important to ensure you have applied for any possible benefits. If your weekly eligible income exceeds the weekly care home fee required to meet your needs, you will be deemed a self-funder via income.

### Income disregarded from the financial assessment

The most common income disregards include:

- Disability Living Allowance or Personal Independence Payment mobility components (not care or daily living components)
- War Widows' special payments
- Christmas Bonus
- income from savings (although interest on savings is capital)
- charitable and voluntary payments (which could be made by a relative)
- Child Tax Credit or Guardian's Allowance
- payments made due to personal injury, except where the payment is specifically intended to cover care costs, for up to 52 weeks from the day of receipt of the first payment.
- awards of certain damages
- discretionary payments made to people infected with hepatitis C by contaminated blood products
- any earnings
- war disablement pension payments paid to injured veterans with the exception of any allowance for constant attendance which is awarded in cases of significant disability.

### Income that is partly disregarded

The most common types of income partly disregarded include:

- £10 a week of War Widow's, War Widower's/War Disablement Pension
- 50 per cent of a private/occupational pension where the pension is received by a married person or a civil partner in a home, provided this is paid to a spouse or civil partner and they do not live in the same home
- qualifying income for Pension Credit Savings Credit equivalent to the amount of Savings Credit received is disregarded up to a maximum of £5.75 a week (£8.60 for a couple)

- if you have a high income and cannot claim Pension Credit or have been awarded less than £5.75/£8.60 a week, a flat-rate disregard of £5.75/£8.60 a week is applied.

### Note

Universal Credit is to replacing Income Support, Housing Benefit, Income-based Job Seeker's Allowance, Income-related Employment and Support Allowance, Working Tax Credit and Child Tax Credit. All are taken fully into account (except Child Tax Credit) when considering what you can afford to pay towards your care.

### Capital treated as income

Some capital assets are treated as income (section 16 the charging regulations). This includes payments under an annuity, earnings not paid as income and pre-arranged third party payments to pay for residential care, but not voluntary payments, for example to remove arrears.

Where an agreement or court order provides that periodic payments are to be made to a care home resident as a result of any personal injury, any non-income periodical payments are treated as income.

### Notional income

Notional income is income you are treated as having even though you do not actually receive it. This might include for example: income that would be available on application but you have not yet applied for it or you have only applied for some of it, income that is due but has not been received or income that the you have deliberately deprived yourself of for the purpose of reducing the amount you are liable to pay for your care.

For more information, see factsheet 40, *Deprivation of assets in social care*.

## 8 Social security and disability benefits

Whether you are single or one of a couple, the local authority expects you to claim all social security benefits you are entitled to when you move to live permanently in a care home. They can include them in the calculation of your financial assessment, whether you claim them or not.

If you already claim a social security benefit, the local authority may ask to see details. It may ask you for permission to request information from your local social security office.

Social security benefits include State Pension, Attendance Allowance (AA), Disabled Living Allowance (DLA), Personal Independence Payments (PIP) and Pension Credit.

## 8.1 Pension Credit

Pension Credit has two parts:

- Guarantee Credit and
- Savings Credit.

Pension Credit is means tested so your entitlement is based on your income and capital. Capital up to £10,000 is disregarded. You are treated as having 'tariff' income of £1 a week for every £500 above £10,000. There is no upper capital limit unlike the social care financial assessment. You must have reached State Pension age to claim.

Eligibility for Pension Credit is worked out by adding up your income, including any tariff income. Most forms of income are taken into account as 'qualifying income'.

If you are a member of a couple and one of you moves permanently into a care home, each of you are treated as single people for Pension Credit.

If you are a member of a couple and you enter a care home on a temporary basis (e.g. for respite or a trial period), you remain treated as a couple. For more information see factsheet 39, *Paying for care in a care home if you have a partner*.

For more on Pension Credit see factsheet 48, *Pension Credit*.

### 8.1.1 Guarantee Credit

Guarantee Credit tops up your income if it is below a level known as your 'appropriate minimum guarantee'.

The appropriate minimum guarantee is £159.35 a week for a single person and £243.25 a week for a couple. Extra amounts can be added if one or both of you receive AA, DLA (middle or high rate care component) or PIP (daily living component). You receive extra if you live alone, are a carer and for some housing costs.

The amount of Guarantee Credit paid is the difference between your assessed income (less any disregarded amounts) and the appropriate minimum guarantee.

### 8.1.2 Savings Credit

Savings Credit is abolished for people reaching State Pension age on or after 6 April 2016. If you reached State Pension age before 6 April 2016, you can still apply for Savings Credit.

If you are a couple where at least one person reaches State Pension age before 6 April 2016, you only get Savings Credit if one of you was already getting it immediately before 6 April 2016 and has been entitled to it at all times since this date.

Savings Credit was for people who had made extra financial provision towards retirement through savings or occupational pensions. If your qualifying income is above a threshold and below the appropriate minimum guarantee, you can claim Savings Credit. The thresholds are £137.35 a week for a single person and £218.42 a week for a couple.

### 8.1.3 Income partly disregarded – savings disregard

An income disregard exists for people aged 65 and over in the residential care means test rules, called a savings disregard.

If you receive Savings Credit, a maximum amount of £5.75 a week for single people or £8.60 a week for a couple is disregarded from the local authority means test. If your Savings Credit is lower than these amounts, the actual amount you receive is disregarded. If your income is too high for Savings Credit, you are entitled to this disregard, whether you claim Savings Credit or not. If your income is too low to qualify for Pension Credit Savings Credit the disregard does not apply.

### 8.1.4 Pension Credit and property

While you try to sell a property, the value can be disregarded when calculating your Pension Credit for up to for 26 weeks (or longer 'if reasonable'), provided the Pension Service is satisfied you are taking 'reasonable steps' to sell it.

For more information see factsheet 38, *Property and paying for residential care*.

#### Note

The local authority should charge you based on your actual income and alter the charge to take account of any changes. It is important to check your benefits and the local authority charges to make sure they are correct.

## 8.2 Disability benefits

Attendance Allowance (AA), Disability Living Allowance (DLA) and Personal Independence Payment (PIP) are benefits paid if you have certain care and/or mobility needs. AA can only be claimed by people aged 65 years and over and does not have a mobility payment. If you claim DLA or PIP before you reach 65, you continue to receive it after your 65<sup>th</sup> birthday, even if your payment includes a mobility element.

If you pay the full cost of your fees (self-funders or retrospective self-funders), you can continue to receive AA, DLA, or PIP. NHS payments for NHS-funded nursing care in a nursing home do not affect your entitlement to AA, DLA care component or PIP daily living component.

If your local authority arranged your care and made a contract with the care home but you pay the full cost, you should still receive AA, DLA care component or PIP daily living component. DLA and PIP mobility components are fully disregarded in the residential care means test as they do not relate to the provision of personal care and support. They should continue to be paid to you in all circumstances.

If you receive AA, DLA care component or PIP daily living component and move permanently into a care home arranged by the local authority, they are included in your financial assessment as part of your income. However, payments normally stop after four weeks (sooner if linked to a stay in hospital or earlier period of state-funded care) if you receive financial support from your local authority.

If your AA, DLA care component or PIP daily living component stops after four weeks and you have a property disregarded under the 12-week rules for the local authority financial assessment, you should ask for these to be reinstated when the 12 weeks has expired.

AA/DLA (care component) or PIP (daily living component) can be paid while you receive interim or temporary funding from the local authority (e.g. while you sell your property) provided that any assistance received from the local authority will be repaid in full.

If your AA, DLA care component or PIP daily living component stops because you get local authority funding and you subsequently return home, or move elsewhere, for example sheltered housing, you can ask for it to be paid again.

AA, DLA and PIP can be paid again if the local authority no longer needs to give you financial help for the cost of fees, for example if you inherit capital. It is important to inform the appropriate authority of any changes, so that you receive all the benefits you are entitled to.

AA, DLA care component or PIP daily living component may be payable if you are temporarily away from a care home. You should always inform DWP if you want your AA, DLA or PIP to be paid again.

### **Point of law**

*The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007* clarify when you are considered to be resident in a care home for AA and DLA. The *Welfare Reform Act 2012* clarifies when you are considered to be resident in a care home for PIP.

You are considered to be resident in a care home when any of the costs of any qualifying services (accommodation, board and personal care) provided for you are paid out of public or local funds.

If you go into a care home from the community, the days you enter and leave are counted as days in the community. The day of transfer between a care home and a hospital or similar institution is treated as a day in a care home.

### **Disability benefits and Pension Credit**

If you receive AA, DLA middle or high rate care component or PIP daily living component, you normally receive an extra amount with your Pension Credit Guarantee Credit. Pension Credit can be paid while you receive interim funding providing your property is up for sale.

It is important to make sure you receive the extra amount while you continue to be paid AA, DLA or PIP as this may reduce the amount that ultimately has to be repaid to the local authority from your capital.

If you enter into a deferred payment agreement, AA, DLA care component or PIP daily living component can be paid as long as you will be refunding the local authority in full. Eligibility for Pension Credit may be affected if your property is not up for sale. If you are a self-funding care home resident, you can keep additional amounts for severe disability paid with your Pension Credit.

For more information see factsheet 34, *Attendance Allowance* and factsheet 87, *Personal Independence Payment and Disability Living Allowance*.

### **Introduction of Personal Independence Payments**

DLA is being replaced by PIP. New adult claimants must now apply for PIP. If you currently receive DLA, this continues but if your circumstances change, you are invited to claim PIP. All working age DLA recipients are being assessed for PIP over the next few years.

If you currently receive DLA and were over 65 on 8 April 2013, you will not be moved to PIP.

## **9 Business asset partial disregard**

You are allowed a 26 week (or longer) disregard of the assets of any business owned (or part-owned) if you are a new care home resident and you have had to stop self-employed work due to illness or disablement. This is in the short-term where your intention is to take up work again in the future when you are able.

If you are a permanent resident, the local authority should disregard the capital value of your eligible business assets for a reasonable period of time, providing steps are being taken to realise the capital value and specified information is provided.

If no immediate intention to realise the capital value in the business assets is demonstrated, your local authority can take the asset value into account in the means test immediately.

The local authority should obtain information about:

- the nature of the business asset
- the estimated length of time necessary to realise the asset
- your share of the assets
- a statement of what, if any, steps have been taken to realise the assets, what these steps were and what is intended in the near future, and
- any other relevant evidence, for example your health, receivership, liquidation or an estate agent's confirmation of placing any property on the market.

## 10 Choice of accommodation and top-up

Your local authority assessment and care planning process determines the type of accommodation best suited to meet your needs. Your local authority has a duty to provide suitable local residential care at your personal budget level, with at least one available choice.

You have a right to choose your particular provider or location, subject to certain conditions. Your choice must not be limited to settings or individual providers your local authority already contracts with or operates.

As well as any area in England, arrangements can be made for placements in Scotland, Wales and Northern Ireland (*Schedule 1 of the Act, Chapter 21 of the statutory guidance*).

In this situation, you have the right to choose between different providers of that type of accommodation provided that:

- the accommodation is suitable to your assessed needs
- to do so would not cost the local authority more than the amount specified in your personal budget for accommodation of that type
- the accommodation is available and
- the provider will enter into a contract with your local authority at the fee rate in your personal budget on your local authority's terms and conditions.

For more information see factsheet 29, *Finding, choosing and funding a care home*.



## 10.1 Third party contributions and the 'usual cost'

If your preferred accommodation costs more than the local authority specifies in your personal budget, it must still make arrangements for you in that home as long as someone else (and in some cases yourself) can make up the difference between that figure and the home's fee. This is a third party contribution or an '*additional payment*' or '*top-up*'.

Your local authority cannot set an arbitrary ceiling on the amount they will pay such that you are required to have a top-up in order to meet the cost of the care home. It must demonstrate that care and support suitable to meet your assessed needs can be arranged within the amount specified in your personal budget. This means the personal budget must contain a realistic figure capable of allowing your residential care needs to be met locally and that you have at least one choice.

If no care home can meet your assessed eligible needs within the amount your local authority sets as your '*indicative personal budget*', it must increase your actual personal budget to meet the extra cost. '*Indicative*' means an early estimation of the cost of meeting your assessed eligible needs.

A more expensive home might be necessary if you have particular needs that cannot be met within your indicative personal budget. For example, if you have specific religious or dietary needs, or a particular need to be near relatives or friends to maintain your wellbeing. Your assessment must consider all the needs that you have and your local authority must be adequately flexible in the way it responds to them.

If you choose a care home costing more than the amount in your personal budget because you prefer it and a third party agrees to pay the additional cost, the local authority must make a contract with your preferred home, subject to the conditions outlined above. The third party must show they can reasonably expect to be able to contribute for as long as the arrangement lasts – i.e. for the length of time you are in the home.

The third party and the local authority must agree what will happen if the home's fees are subsequently raised. The local authority will not necessarily agree to pay for all, or even part of, an increase. If the third party additional payments cannot be continued, you may have to move to another less expensive home. The local authority should carry out an assessment of the effect on your wellbeing and any risks involved before taking this course of action.

Additional payments and choice of accommodation have been extended to those being placed for '*after care*' under section 117 of the *Mental Health Act 1983* via the *Care and Support and After-care (Choice of Accommodation) Regulations 2014*.

## Residents' contributions to more expensive accommodation

You cannot usually top-up your own fees to meet additional costs of more expensive accommodation, for example using your Personal Expenses Allowance or disregarded capital or income.

However, if your property is subject to the 12-week disregard, or you have entered into a '*deferred payment agreement*' or you receive accommodation under section 117 for mental health aftercare, you can make additional payments.

This exception is made as you are considered to have enough resources yourself to pay for more expensive accommodation once the value of your home is realised.

For more information see factsheet 38, *Property and paying for residential care*.

## 11 Personal Expenses Allowance

The local authority has to allow you to keep a Personal Expenses Allowance (PEA) of £24.90 a week. You should not be asked to put your PEA towards the cost of any of your care if you are a permanent or temporary resident. It is for your own personal use.

Local authorities have a discretionary power to increase your PEA. The statutory guidance provides a list of illustrative examples to assist local authorities in the use of their discretion. One of these relates to where one of a couple goes into a care home, their property is disregarded in the financial assessment and they have ongoing housing costs.

## 12 The means test calculation

Once your local authority has all the information about your income and capital, it calculates how much you should contribute towards the costs, ensuring you are left with a PEA of £24.90 a week. The local authority should give you written information setting out how it calculated the amount you should pay, including the level of your personal budget.

The following examples show what your contribution might be.

### Example 1

You are 83, single and live in a rented flat. You have capital of £5,000 and your weekly income is State Pension of £122.30 and PC Guarantee Credit of £37.05, to give an assessable amount of £159.35 a week.

The local authority arranges for you to move permanently into a care home. Your personal budget is set at £700 a week to meet your assessed eligible care and support needs. The home costs £700 a week.

Your capital is ignored by the local authority because it is less than £14,250.

<b>The local authority calculation</b>	<b>£</b>
<b>Your total weekly income (£122.30 plus £37.05)</b>	159.35
Less PEA	24.90
<b>Your weekly contribution to personal budget</b>	134.45
Local authority's contribution to personal budget	565.55
Cost of the home	700.00

### Example 2

You are married, aged 82, with a weekly private pension of £200. Your wife will remain living in the flat you jointly own. Your State Pension is £122.30 a week. You have a savings account in your name of £10,400 and a joint account of £8,000.

The local authority agrees to arrange a permanent place for you in a care home costing £650 a week. Your personal budget is set at £650 a week to meet your assessed eligible care and support needs. The value of your flat is ignored because your wife continues to live there. Half your private pension is ignored as you pay half to your wife.

Your savings of £10,400, together with half of the balance of the joint account, £4,000, are included in the calculation. Your total capital is assessed as £14,400, so you have a tariff income of £1 a week. Your State Pension and the other half of your private pension are included.

Your weekly income means you do not qualify for Pension Credit Guarantee Credit or Savings Credit. As your assessed income is more than £188.25 a week, the local authority must disregard £5.75 a week of that income as well as allowing you to retain a PEA of £24.90.

<b>The local authority calculation</b>	<b>£</b>
State Pension	122.30
50% private pension	100.00
Tariff income from capital	1.00
<b>Your total weekly income</b>	<b>223.30</b>
Less Personal Expenses Allowance (PEA)	24.90
Less Pension Credit disregard of qualifying income	5.75
<b>Your weekly contribution to personal budget</b>	<b>192.65</b>
Local authority's contribution to personal budget	457.35
Cost of the home	650.00

### 13 Paying for 'extras' in care homes

You should find out exactly what care the local authority is arranging when it makes a contract with a home. If you are in a nursing home, you should check if the NHS registered nurse contribution (£155.05 a week in 2017/2018) has been included as you should not have to pay for this.

The basic contract price should cover all essential care but may not cover things like clothing or hairdressing. You may wish to use your PEA to cover these costs. The purpose of the PEA is to ensure you have money to spend as you wish. The statutory guidance states that '*This money is for the person to spend as they wish and any pressure from a local authority or provider to do otherwise is not permitted*'.

Your PEA should not be spent on board, lodgings and care that have been contracted for by the local authority. This does not prevent you buying extra services from your care home where these are genuinely additional to services contracted for by your local authority and/or assessed as necessary by the NHS.

## 14 Arrangements for paying the care home fee

Where a local authority arranges a care home placement, it is responsible for contracting with the provider. They guarantee payment of the full fee, including any 'top-up', as part of its duty to ensure your eligible needs are met.

The local authority generally pays the full fee and then collects from you the amount you have been assessed to pay towards your personal budget, including any benefits you receive.

If a 'top-up' is required for your accommodation and all parties agree (you or the 'third party' paying the top-up, the local authority and the home), you and the local authority can each pay your respective share directly. Statutory guidance states this is not recommended.

## 15 NHS and other social care services in care homes

The NHS is responsible for providing community health services to you in your care home on the same basis as if you are in your own home. These services include district nursing and other specialist nursing. You can receive physiotherapy, speech and language therapy, occupational therapy and chiropody. Your GP should visit you if needed.

The NHS is responsible for providing continence services to residents in homes providing nursing care and for meeting the cost of any continence supplies (such as continence pads) that residents are assessed as requiring, including any equipment needed.

Community health services such as continence supplies and district nursing should be provided to residents of care homes that do not provide nursing care, using the same criteria as for people living in their own homes.

Where services are provided by the NHS, they are free of charge. The NHS covers the cost of health-related equipment provided to you that is not standard provision within the home if you are assessed as needing it. Your Clinical Commissioning Group should have its own criteria for the type of help it provides, based on statutory guidance. These criteria should be published and available locally.

Your local authority can provide other personal social care services to you in a care home based on your eligible needs. This includes short-term rehabilitation (called reablement) or the provision of bespoke disability equipment such as specialist seating - beyond what a care home has a legal duty to provide. This is based on your right to social care in the area where you permanently live. Local authority-provided equipment is free.

### Action

If you have difficulty obtaining information or feel that you have been incorrectly charged for products and services in your care home, consider making a complaint. Both local authorities and local health bodies are required to operate formal complaints procedures and should provide you with details.

## 16 Non-means tested assistance with care costs

This section sets out exceptions to the means tested funding requirement for residential care and other related services.

### 16.1 Fully funded NHS continuing healthcare

In certain circumstances, the NHS is responsible for meeting the full cost of your care in a care home. This is called NHS continuing healthcare or '*fully funded care*'. To be eligible, you must have a high level of health-related needs in a number of areas (known as '*domains*') resulting in your '*primary need*' being health-based, thus entitling you to free health care rather than means tested social care.

If you might be eligible for NHS continuing healthcare, the professionals involved in your care (for example GP, nursing staff or social worker) must actively consider this possibility.

They should inform you or your representatives of your rights and carry out an appropriate assessment based on the *National Framework* for NHS continuing healthcare guidelines and its assessment tools. To move to a social care means test without addressing your potential right to free NHS service provision may constitute poor professional practice and can be challenged.

### Note

If you think your need for NHS continuing healthcare has not been addressed but should have been, you should ask to be assessed using the checklist tool set out in guidance.

For more information see factsheet 20, *NHS continuing healthcare and NHS-funded nursing care*.

## 16.2 Short-term rehabilitation in a care home

Social care rehabilitation services must be provided free of charge for at least the first six weeks. After this, you can be charged in a similar way to other local authority services. It may be called '*intermediate care*' or '*reablement*'. When it is provided in residential care it is called intermediate care.

It is often provided to prevent hospital admission or after discharge from hospital to maximise independence where a rehabilitation potential is identified. There should be an initial plan and reviews throughout to gauge progress and an agreed future action plan at the end. It does not normally last longer than six weeks, but can be extended where there is evidence that further rehabilitation progress can be made. At the end of the period, you may qualify for fully funded NHS continuing healthcare, or require other social care services for which you may be charged.

For more information see factsheet 76, *Intermediate care and reablement*.

## 16.3 Care provided by registered nurses in care homes

The NHS is responsible for meeting registered nursing costs for residents in care homes that also provide nursing care, known as nursing homes. Nursing care is care given by a registered nurse in providing, planning or supervising your care. It does not include time spent by other staff involved in your general personal care.

Responsibility for meeting nursing care costs lies with your Clinical Commissioning Group (CCG). If you move to home into a different CCG area, you become the responsibility of that CCG when you register with a GP there.

The NHS makes payments directly to your care home. Before you move into a care home, the service provider must clearly set out the fees they intend to charge and what services they cover. This should be stated in the statement of terms and conditions they provide. You may need to ask if the fee quoted includes or excludes payments made by the NHS for NHS-funded nursing care.

For more information see factsheet 20, *NHS continuing healthcare and NHS-funded nursing care*.

## 16.4 Mental health ‘after-care’ services – section 117

If you have been detained in hospital for treatment under certain sections of the *Mental Health Act 1983*, your residential care may be provided as an ‘after-care’ service under Section 117 of this Act. Local authorities cannot charge for after-care provided under Section 117 and this has been confirmed by the House of Lords. Section 117 places a joint duty on health and social services authorities to provide after-care services. Section 75(5) of the *Care Act 2014* confirms that its purpose is to meet ongoing mental health-related needs and to reduce ‘the risk of a deterioration of the person’s mental condition...requiring admission to a hospital again for treatment for mental disorder.’

### Choice of accommodation

The *Mental Health Act 1983* has been amended by the *Care Act 2014* to make it clear that local authorities are required to provide or arrange the provision of preferred accommodation if specified conditions are met.

People who receive mental health after-care have broadly the same rights to choice of accommodation as someone who receives care and support under the *Care Act 2014* although there are no restrictions upon when the resident can pay a ‘first party’ top-up.

### After-care and dementia

In *R v Richmond LBC and others, ex parte Watson and others [1992] 2 CCLR 402*, it was held that after-care provision under Section 117 does not have to continue indefinitely but it must continue until the health body and the local authority are satisfied that the individual no longer needs such services. The judge felt that it was difficult to see how such a situation could arise where the illness is dementia.

In *Complaint number 06/B/16774 against Bath and NE Somerset Council, 2008*, the Local Government Ombudsman found maladministration when a local authority sought to discharge a person with dementia from a section 117 care home placement because they had ‘settled’. Here it was stated that:

*Whether or not a person is ‘settled in a nursing or residential home’ is an irrelevant consideration. The key question must be, would removal of this person (settled or not) from this nursing or residential home mean that she is at risk of readmission to hospital? If the answer is yes then the person cannot be discharged from aftercare.*



## 17 Arranging and paying for your care yourself

You are free to find a place in a care home yourself if you can make your own arrangements and pay the fees.

After a local authority needs assessment, your subsequent financial assessment may also find that you must pay the whole amount of your care home fee. This is sometimes called '*self-funding*'. If you have support and assistance or can manage alone, you are expected to arrange this yourself. Otherwise, the local authority must assist you to ensure your needs are met. See section 3.1 on their duties.

Each care home must adhere to standards set out by the Care Quality Commission CQC based on legislation. An example of this is Regulation 10 of the *Care Quality Commission (Registration) Regulations 2009* on fees requiring the provision of a written copy of the terms and conditions to be provided prior to the placement commencing.

### If your funds run down to the upper capital limit

If you self-fund in a care home but your capital falls towards the upper capital limit (£23,250), you should ask your local authority for an assessment of your care needs and to see if you are now eligible for funding assistance. This may take time to arrange so it is worth asking a few months before your capital reduces to £23,250.

Your local authority must undertake a requested assessment and related financial assessment as soon as is reasonably possible, taking into account the urgency of your needs.

Once aware of your situation, they should seek to ensure you are not inappropriately forced to use up your capital as a result of an assessment delay. If this happens, you can complain, which can include a request for financial compensation.

If the home in which you have been self-funding costs more than the local authority is prepared to pay, this can cause difficulties if you apply for local authority assistance. The local authority may require a third party to make up the difference. If none is available, they may suggest you move to a cheaper care home.

If this is suggested, ask the local authority to carry out an assessment of all your needs including your physical or psychological wellbeing and your social and cultural needs. They should look at the risk of moving you. If your existing care home is found to be the only one that can meet your assessed eligible needs, the full cost should be met by them.

If you have trouble selling your home within the time required to meet local authority financial assessment requirements, you may be able to negotiate a deferred payments agreement as an interim '*bridging loan*'. See section 12.15 of factsheet 38, *Property and paying for residential care*, for further information.

## If you move areas for care home accommodation

If you move to a care home in a different local authority area from where you lived before and have since been self-funding, the local authority in the area you now live are usually responsible for assisting you.

## Benefits entitlement

You may be able to claim or receive AA, DLA care component or PIP daily living component if you do not receive funding from the local authority. NHS payments for registered nursing care may not affect your right to receive AA, DLA care component or PIP daily living component. Depending on capital and income, you may be able to claim Pension Credit.

You have a right to information and advice from your local authority to assist you to make decisions about how to meet your needs.

## 18 The local authority information and advice duty

Your local authority has a duty to provide an information and advice service relating to care and support for you. As a minimum, this must include the following:

- the local care and support system and how it operates
- the choice of types of care and support
- the choice of providers available to you
- how to access the care and support that is available
- how to access independent financial advice relevant to meeting your needs for care and support and
- how to raise concerns about your safety or wellbeing.

This general local authority duty links with other broad local authority duties, for example to do with prevention and cooperation with local health and housing services.

'*Independent financial advice*' is financial advice provided by a qualified person who is independent of the local authority in question, for example they are regulated by the Financial Conduct Authority.

## 19 People who can act on your behalf

### Appointees for benefits

If you receive social security benefits but are unable to manage your affairs, the DWP can appoint someone else to make claims and receive benefits on your behalf. An appointee is usually a close friend or relative who visits you regularly.

As a last resort, your care home owner can act as appointee, but in such cases, they must keep a record of the money collected on your behalf. You and a prospective appointee are interviewed before any appointment is made. An appointee's powers only extend to the management of social security benefits.

### **Independent advocacy**

If you have substantial difficulty being involved with the local authority care and support process and have no one to assist you, the local authority must provide an independent advocate to support and represent you. The duty is triggered where you experience substantial difficulty:

- understanding relevant information
- retaining that information
- using or weighing that information as part of the process of being involved
- communicating your views, wishes or feelings.

### **Mental capacity – advocates and attorneys**

While you are able to make decisions and express your views, you might think how you would want your affairs dealt with if you lose mental capacity in future. This can be arranged by creating a Lasting Power of Attorney (LPA), which can be for finance and property and/or health and wellbeing. If these powers need to be created after you have lost mental capacity, an application can be made for a Deputyship with the Court of Protection (*Mental Capacity Act 2005*).

Local authorities must appoint an Independent Mental Capacity Advocate (IMCA) if you lack the mental capacity to make a decision, for example about moving into a care home and you have no friends or relatives to support you.

All actions taken on your behalf must be made in your 'best interests' as defined by the *Mental Capacity Act 2005* and supporting Code of Practice and be in line with the highest possible ethical standards. You can contact the Office of the Public Guardian if you have any concerns about the behaviour and actions of those granted powers under the Act.

For more information see factsheet 22, *Arranging for someone to make decisions on your behalf*.

## 20 Complaints

If you are not satisfied with any aspect of the service you receive from your local authority, you can complain. Some issues are dealt with informally, but you can make a formal complaint to the authority in question. Beyond this you have a right to complain to the Local Government Ombudsman.

Once you are in a care home, you should be assisted to discuss issues and concerns via internal complaints and feedback procedures. If you have been placed by your local authority, you can use their complaints procedure.

You can inform the Care Quality Commission about any concerns you have. They do not have duties to respond to you individually. However, they have extensive powers and must respond appropriately.

If you have arranged and funded your placement independently, you can complain to the Local Government Ombudsman about your care home.

You can raise a safeguarding alert with the local authority if you have concerns about abuse or neglect.

See factsheet 59, *How to resolve problems and complain about social care* and factsheet 78, *Safeguarding older people from abuse and neglect*.

## Useful organisations

### Care Quality Commission

[www.cqc.org.uk](http://www.cqc.org.uk)

Telephone 03000 616 161 (free call)

Independent regulator of adult health and social care services in England, covering NHS, local authorities, private companies or voluntary organisations and people detained under the *Mental Health Act*.

### Carers UK

[www.carersuk.org](http://www.carersuk.org)

Telephone 0808 808 7777

Provides information and support for carers, including information about benefits.

### Citizens Advice

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Telephone 0344 411 1444 (England)

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

### Department of Health

[www.gov.uk/government/organisations/department-of-health](http://www.gov.uk/government/organisations/department-of-health)

Telephone 020 7210 4850

Government department with overall responsibility for social care.

### EAC FirstStop Advice

[www.firststopcareadvice.org.uk](http://www.firststopcareadvice.org.uk)

Telephone helpline 0800 377 7070 Mon 8am–7pm, Tues– Fri 8am–6pm

Provide information on housing options for older people and signposts to relevant advice organisations.

### Equality Advisory Support Service

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone helpline 0808 800 0082 Mon-Fri 9am-7pm, Sat 10am-2pm

Funded by the Equality and Human Rights Commission, the EASS Helpline provides information and advice about the *Equality Act 2010*.

## Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

### Age UK Advice

[www.ageuk.org.uk](http://www.ageuk.org.uk)

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

### In Wales contact

#### Age Cymru

[www.agecymru.org.uk](http://www.agecymru.org.uk)

0800 022 3444

### In Northern Ireland contact

#### Age NI

[www.ageni.org](http://www.ageni.org)

0808 808 7575

### In Scotland contact

#### Age Scotland

[www.agescotland.org.uk](http://www.agescotland.org.uk)

0800 12 44 222

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