



advice and support for older age

**Independent
Age**

Guide

Guide 52

Care home fees: paying them in Scotland

The process for moving into a care home can be confusing. This guide provides you with information on how to begin the process for moving into a care home and who to approach, how your finances and property are assessed, how to access funding from the council or NHS, the different ways of being invoiced for your fees and how to challenge decisions.

Independent Age recently merged with Counsel and Care. Our advice service offers free information and advice on issues affecting older people. All the guides we publish are available from our website www.independentage.org and paper versions can be ordered by calling 020 7241 8522.

You can also call our advice line on 0845 262 1863 to arrange an appointment to speak to one of our experienced advisers.



Independent Age is a unique and growing charity providing information, advice and support for thousands of older people across the UK and the Republic of Ireland.

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

If you live in England, see our guide:

Care home fees: Paying them in England (guide number 16).

If you live in Wales, see our guide:

Care home fees: Paying them in Wales (guide number 72).

All of the guides we publish may be downloaded from

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1 Moving into a care home

If you are finding it difficult to cope at home, you may want to request a 'needs assessment' from your local council's social work department. The contact details for your local social work department will be in the telephone directory or will be on the council's website. The needs assessment will be carried out by a social worker, usually in your own home, and will determine what your exact care needs are. For more information about getting a needs assessment, see our guide: **Assessment and services from your local council in Scotland** (guide number 50).

The needs assessment may suggest that your care needs can be met in your own home with the help of carers visiting you (for example, to help you with washing, dressing etc), by making adaptations to your home (such as installing a bath seat) or by having mobility equipment (such as a walking frame or walking stick).

Alternatively, the needs assessment may suggest that your care needs would best be met by you moving to a care home as you may be at 'risk' if you stay in your own home. You should be given a copy of your needs assessment and care plan stating the recommendation that your needs would best be met in a care home.

1.1 What type of care home do you need to move to?

Your needs assessment should specify which sort of care home can meet your care needs, for example: a nursing care home, residential care home or a care home for the elderly mentally infirm (EMI). Some care homes are now 'dual registered' which means that part of the care

home provides residential care and another part provides nursing care for people with higher care and support needs. One advantage of such a care home is that if your care needs change from residential care needs to nursing care needs, it may be possible to stay in the same care home rather than having to move to another care home.

To find out which care homes of the sort you require are available in your local area, you can contact the Elderly Accommodation Counsel (tel.: 020 7820 1343; www.housingcare.org) or the Care Inspectorate (tel.: 0845 600 9527; www.scswis.com). Both organisations can provide information on registered care homes throughout Scotland.

It is advisable for you or a friend or relative to visit several care homes before choosing, to see what they are like and what facilities are available. It is a good idea to think about what you would like from your care home before going to visit. For more information about choosing a care home, see our guide:

Care Homes: what to look for (guide number 19).

If you need help to manage your finances (including paying care home fees) you may want to contact the Office of the Public Guardian Scotland (tel.: 01324 678300; www.publicguardian-scotland.gov.uk). They can provide you with information about Continuing (financial) Powers of Attorney (where someone still has the mental capacity to agree to someone managing their finances) or Financial and/or Welfare Guardianship (where someone has already lost the mental capacity to manage their own affairs).

2 What if I have personal and/or nursing care needs?

In Scotland, if you are over 65 and have care needs that meet the definition of 'personal care' which need to be met in a care home, your local council will pay £163 a week towards your care home fees.

If your care needs also meet the definition of 'nursing care' which needs to be met in a care home, your local council will pay an additional £74 a week for your nursing care. This means the council's total contribution towards your care home fees will be £237 a week. There is no minimum age to receive a nursing care payment.

You may be expected to contribute towards, or pay in full, the rest of the care home costs. These are known as the 'accommodation/hotel costs'. To work out your contribution towards the accommodation/hotel costs, you will need to have a financial assessment by the social work department following your needs assessment (see section 4).

You are only eligible for personal and nursing care payments if you have had a needs assessment by the social work department which has shown you as requiring this care and, then only when the council has contracted with the care home for these payments. This means that if you are arranging your own care home placement and move in before a needs assessment has taken place, or before a contract is agreed between the council and care home for your care home fees, you may be responsible for the full cost of any fees prior to the completion of a needs assessment or contract agreement. Any funding you later receive cannot be backdated.

3 Does my spouse or partner have to contribute towards my care home fees?

Your spouse or partner does not have to pay towards your care home fees. There used to be a liable relative's rule whereby the council could ask the spouse remaining at home to contribute to the other spouse's care home fees. This is no longer the case. If your spouse is using their income or savings to pay for your care home fees, you should seek advice from an advice service such as Independent Age (tel.: 0845 262 1863; www.independentage.org).

If one of a couple moves into a care home permanently but the other partner remains at home, the value of the property will not be taken into account for as long as they continue to live in the property (see section 5).

If one of a couple moves into a care home permanently, you may want to claim any benefits separately (such as Pension Guarantee Credit, Housing Benefit, and Council Tax Benefit etc). Citizens Advice Scotland (www.cas.org.uk), Citizens Advice Direct (tel.: 0844 848 9600) and the Age Scotland Helpline (tel.: 0845 125 9732) can help you apply/re-apply for benefits.

Please note, your spouse/partner not having to contribute towards your care fees only applies to residential care. For care provided at home, the council can take into account the capital and income of your spouse or partner when providing you with home care services.

4 How does the council calculate how much I have to pay towards my care home fees?

If, after the needs assessment, you agree that you would like to move into a care home, a social worker will carry out a 'financial assessment' to determine your contribution towards the 'hotel/accommodation' costs of your care home fees. The cost of your personal care or nursing care in the care home is covered by your local council (see section 2). Every council must follow the 'Charging for Residential Accommodation Guide' (CRAG) when calculating out how much you need to pay towards your care home fees. Your local council will need to know your capital, income, and any property you own or part-own.

4.1 Capital

CRAG sets out the upper and lower capital thresholds for charging for residential care. Currently, the upper capital threshold is £24,750 and the lower capital threshold is £15,250. These are reviewed each April.

Any savings, ISAs, land, buildings, stocks and shares, premium bonds, tax refunds, the surrender value of any investment bonds (unless it includes a life assurance element) that you have will be counted as capital in the financial assessment for care home fees.

Your home may be counted as capital depending on your situation (see section 5).

Capital that is not included in your financial assessment for care home fees includes: the surrender value of any life insurance policies/annuities you have, some types of payment from charities,

personal possessions such as paintings and antiques, any Social Fund Payments, and compensation received as a result of personal injury.

If you have capital over the upper capital threshold (i.e. above £24,750), you will be responsible for paying all of the accommodation costs of your care home fees (see section 11) until your capital reduces to the upper savings threshold.

If you have capital below the upper capital threshold (i.e. below £24,750), the council will contribute towards your care home fees but you will still have to contribute most of your weekly income towards your care home fees (see section 4.2).

If you have capital between the upper and lower capital threshold (i.e. between £15,250 and £24,750), as well as the contribution from your weekly income, you will also have to contribute an extra £1 a week for every £250 you have in savings between £15,250 and £24,750. This is known as 'tariff income' (see section 4.3).

If you have capital below the lower capital threshold (i.e. below £15,250) you will not be expected to use any of this capital to pay for the accommodation costs of your care home fees.

4.2 Income

If the council is going to contribute towards the accommodation part of your care home fees, you will have to use most of your income (such as your State Pension, Pension Credit, earnings, income from investment bonds, income from insurance policies, income from annuities, etc) as a contribution towards your care home fees.

Some types of income are not taken into account in the financial assessment:

- War widows and widowers special payments
- The mobility component of Disability Living Allowance
- Christmas bonus
- 50% of your occupational pension if you give it to your spouse or civil partner to support them at home. If you are not in a civil partnership or married to your partner, you will have to ask the council to increase your PEA under the discretionary rules to support your partner at home (see section 4.4).

Generally, unless the income is disregarded, it will be taken into account in the financial assessment for care home fees.

You will be allowed to keep £23.50 a week from your income. This is known as your Personal Expenses Allowance (PEA) (see section 4.4). You may also keep any 'Pension Savings Disregard' you have been awarded of up to £5.80 per week (for a single person) or £8.70 a week (for a couple) (see section 8.1).

If your weekly income is higher than the cost of your care home fees and the Personal Expenses Allowance (£23.50) added together (which is unusual), you will be responsible for the full cost of the accommodation part of your care home fees (see section 11) even if you have capital below £24,750.

4.3 Assumed income from my savings – tariff income

You will be assumed to have £1 a week extra 'tariff' income (on top of your actual income) for every £250 or part of £250 you have between

£15,250 and £24,750 in savings. This tariff income will be added to your assessed contribution from your weekly income.

For example: Mr Wilson is single. He receives a State Pension and an occupational pension which gives him a total weekly income of £160. He also has savings of £16,100. In the financial assessment, Mr Wilson would be assessed as having a tariff income from his savings of £4 per week (£1 for every £250 or part of above £15,250) bringing Mr Wilson's total assessed income to £164 a week.

The amount of tariff income you pay decreases as your savings decrease. When your savings deplete to the lower capital threshold (£15,250), you will not have to pay a tariff income on your savings.

4.4 The Personal Expenses Allowance

If your care home fees are part-funded by the council, most of your weekly income will be taken as a contribution towards the hotel/accommodation cost of your care home fees. However, you will keep a Personal Expenses Allowance (PEA) of £23.50 a week from your assessed weekly income. You can use your PEA to cover expenses not covered by your care home contract, for example, toiletries, stationary or small presents for friends and relatives.

The council has discretion to allow you to keep more than £23.50 a week PEA. This could be because you have to pay ground rent or standing charges for a house that you are trying to sell or because there are other housing-related costs for a property that you still own i.e. because you have agreed a deferred payment agreement with the council (see section 5.3).

You can also ask to have your PEA increased to help support your spouse or partner who remains at home, for instance, if they are living on a low income and have claimed all the benefits they are entitled to, or if they need help with the cost of visiting you. There is no definition of the circumstances when the council will definitely increase your PEA; you will need to negotiate with the council about this.

4.5 How is our capital and income assessed if me and my spouse/ partner are moving into a care home?

If you and your spouse or partner both move into a care home, your local council will assess you as separate individuals with separate finances. This means you can each have savings of up to £24,750 and the local council will be responsible for contributing towards the cost of the hotel/accommodation part of your care home fees.

If you have joint savings, these will be split in half for the purpose of the financial assessment. If you hold money in a joint account in unequal proportions, you may want to close the joint account and open your own account with your portion of the savings. The financial assessment can then be 'tweaked' by the council to account for the actual amount you held in the joint account. You may be asked for written proof that you own a certain percentage of the money held in the joint account.

If you and your spouse or partner are moving into a care home, you may want to claim Pension Credit as individuals rather than as a couple. This is because it is worth more (per person) if you claim as an individual. Even if you are moving into the same care home, you can ask the Department for Work and Pensions to treat you as individuals when calculating your Pension Credit entitlement.

5 Will my property be taken into account as capital in the financial assessment?

The council should follow section 7, 'Treatment of Property', in the 'Charging for Residential Accommodation Guide' (CRAG) when deciding whether to include the value of your property as capital in the financial assessment for care home fees.

If you rent your home, the value of your home is not taken into account in the financial assessment.

If you own your home, the value of your home will not be counted as capital if your spouse or partner lives there, even if the property is in your name.

The value of your home is also ignored if a relative lives there who is:

- 'Incapacitated' (they receive or would qualify for a disability benefit such as Attendance Allowance or Disability Living Allowance);
- A child you are responsible for under the age of 16;
- Aged 60 or over.

If your partner or relative as described above, later moves out of your property or your property is sold, the value of your home will be included in your financial assessment in the usual way.

The council has discretion to ignore the value of your property in other circumstances, such as, for example, if a friend gave up their own property some time ago in order to move into your home to care for

you but you now have to move into a care home. However, this decision can be reviewed by the local council at any time.

If you live by yourself, or if you live with someone who the above circumstances do not apply to, your property will be taken into account as capital in the financial assessment. Due to the high value of property in many parts of the country, this may mean you will be paying for all of your 'hotel/accommodation' costs of your care home fees (see section 11).

If you own properties, other than your main home, their full value will be taken into account in the financial assessment as capital.

If you jointly-own any properties not covered by the disregards described above, their full or partial value (beneficial interest) may be taken into account in the financial assessment (see section 6).

5.1 The 12-week property disregard

If you have less than £24,750 in savings and you are moving to a care home on a permanent basis, for the first 12 weeks the council must ignore the value of your sole/main property if you own it. This is known as the '12 week property disregard'. This means that if you own a property but have limited savings, you may be eligible for help with the hotel/accommodation part of your care home fees for the first 12 weeks (on top of any eligibility you may have to personal and nursing care payments).

It also means that if you are already living in a care home that you are paying the full fees for yourself without any help from the council, but

your savings have now reduced to £24,750 and you have not sold your property, you may still be eligible for the '12 weeks property disregard' whilst your property is being sold.

If you are a self-funder whose local council was involved in your care home placement in order to pay your personal and/or nursing care payments, you may not be eligible for the 12 week property disregard. The Scottish Guidance is unclear on this point.

If you are eligible for the 12 week property disregard, the council must contract with your care home for the first 12 weeks, paying your full fees, and then invoice you for your assessed financial contribution. If you are receiving the 12 week property disregard, you will lose your eligibility to Attendance Allowance or the care component of Disability Living Allowance after 28 days.

If you want to stay in a more expensive care home than what the council would normally pay for, you (or a relative) can pay a 'third party top up' (see section 10) to allow you to stay there. This is where the council pays what they normally would for a care home placement and you (or a relative) pay the difference.

If your property is sold before the 12-week property disregard period ends, the disregard ceases and the value of your property will be included as capital in the financial assessment from the date of sale. After 12 weeks, the value of your property will be counted as part of your capital whether you have sold it or not and you will be considered a 'self-funder' (see section 11).

5.2 A loan from the council while your property is being sold

If you have put your home up for sale to pay for your care home fees but it is still not sold after the 12 week property disregard ends, the council may give you an interest free loan to pay for your care home fees. This is sometimes referred to as 'interim funding'. The interim funding will stop once you have sold your property. You will have to pay back the loan to the council when your property is sold. The council may seek 'security' against the property to cover the loan.

5.3 What if I do not want to sell or cannot sell my property?

If you are going into a care home and have less than £15,250 in capital (excluding the value of your home), and you do not wish to sell your home or are unable to sell your home within 12 weeks, you can request a long-term loan, known as a 'deferred payment agreement', from the council.

Having a deferred payment agreements means that you will pay a weekly contribution towards your accommodation/hotel costs from your income and the council will pay the shortfall in fees and recover these costs at a later date when your property is sold.

Councils should inform eligible residents of their option to enter into a deferred payment agreement. Although councils can prioritise applicants, they should only do this if absolutely necessary i.e. to avoid overspending their allocated funding. You may not be provided with a deferred payment if:

- There is an outstanding mortgage. This is because it may not be possible to meet your mortgage repayments at the same time as your care home fees from your income.

- The size of the deferred payment the council is asked to make may prevent other people from accessing the scheme (in relation to the council's total budget for the scheme).
- The value of your property (or share in the property) is unlikely to cover the total cost to the council of contributing to your care home fees until the agreement ends.

If the council agrees to a deferred payment agreement, it will usually seek a 'standard security' (or charging order) on your property to make sure the money is repaid once the property is sold. You can end the deferred payment agreement by selling your property and/or paying back the loan at any time. No interest is charged on the loan until 56 days after you pass away.

The council may only loan you an amount up to the amount they would normally expect to pay for a care home placement. A 'top up fee' from a third party such as a friend or relative may be required if you wish to go to a more expensive care home when an equally suitable but less expensive care home is available (see section 10).

The council may have discretion to defer the top up fee against the value of the property (add it to the rest of the deferred payment agreement). Or, you can use your disregarded capital, but you and the council will need to consider if this will be sufficient to meet the additional cost for the time you are in the care home.

If the council refuses to give you a deferred payment agreement, they should state the reason for refusal in writing. You may want to seek further advice if this happens.

5.4 What happens if your property is rented out?

If you choose not to sell your property and rent it out to tenants, any rental income will be counted as income in the financial assessment and the value of the property will be counted as capital in the financial assessment (unless it falls within one of the property disregards). If your total capital (including the value of the property) is over £24,750, you will be responsible for the full cost of your care home fees. You may still be eligible for free personal or nursing care to help with this.

You may want to ensure that when renting the property, your total income (including rental income) covers any care home fees you are responsible for paying. If your income does not cover the cost of your care home fees, you can request a deferred payment agreement from the council (if you have savings below £15,250) to try and cover the 'funding gap'. It is unclear if the council would provide a deferred payment in such circumstances.

By choosing to let out your property (or seeking a deferred payment agreement) rather than sell it, the value of your property will be taken into account in your assessment for Pension Guarantee Credit and may mean you are not longer eligible for it (because of the tariff income element of PGC of £1 for every £500 you have in capital above £10,000). Also, any rental income you receive will be included as part of your annual income and you may be liable to pay income tax on it. Contact HM Revenue and Customs (www.hmrc.gov.uk) for further advice on this.

6 Jointly owned property

6.1 Legal and beneficial ownership – what is the difference?

You can own property as a legal owner, that is, hold property in your name. However, in order to be entitled to any capital from the sale of a property, you must also be a beneficial owner. If you are the only legal owner and the only beneficial owner, then you will be entitled to all of the capital from the property sale. The council will take the full value of the property into account in your financial assessment (minus any selling costs up to 10% of the value of the property and any outstanding mortgage).

6.2 Are you a legal owner or a beneficial owner?

If you legally (either individually or jointly) hold property in your name, have not contributed money in any way towards the purchase, improvement or maintenance of the property and are not entitled to benefit from the sale of the property, then according to CRAG, the council should not normally consider you to hold any beneficial interest in the property.

If an agreement is signed by the joint legal owners when the property is purchased, which details the arrangement of beneficial ownership and makes this clear to the Registers of Scotland Executive Agency, this should be accepted by the council as 'written evidence' of how the beneficial interest should be assessed. However, a high court decision has prompted several councils to take a different view of the situation when a local council has sold a council property to their tenant (under the Right to Buy Scheme) with a discount on the market value, but someone else, such as a relative, paid for the property at the

discounted price on the tenant's behalf. The councils in question have, since the court decision, been treating the 'discount' given to the council tenant as equivalent to the tenant's financial contribution to the value of the property (their beneficial interest). Some councils have also claimed that the person paying the purchase price (i.e. the relative) is merely a creditor and not a beneficial owner.

There has since been another court decision showing that Right to Buy discounts should not automatically be treated as giving a person a beneficial interest and highlights that each case should be looked at on its own merit. In general, the longer the property has been owned and the more people (family members etc) that paid for the property/ took responsibility for the maintenance and improvements to the property, the less likely that a Right to Buy discount will amount to an automatic beneficial interest for the person who had the right to buy.

Please contact Independent Age (tel.: 0845 262 1863; www.independentage.org) for advice if any of these circumstances apply to your situation.

6.3 Establishing the value of your beneficial interest in the property

If it is established that you have a beneficial interest in a property, the council must follow the rules in CRAG to establish what the actual monetary value of your beneficial interest is and use this figure in your financial assessment. The council should not simply value the property as a whole and assume that the value of your beneficial interest is the equivalent amount of your share of the market value of the property.

There are two main factors that CRAG explains will govern the value of your beneficial interest:

- Your ability to re-assign your share of beneficial interest to someone else; and
- There being someone willing to buy your share of beneficial interest (a market or willing buyer for the beneficial interest).

For example, if you and someone else hold joint beneficial interest in a property with a value of £100,000, it may appear that the value of your share of the beneficial interest is £50,000. However, this would only be the case if the other joint owner, or someone else, agrees to buy your beneficial interest for £50,000. If the other joint owner or another willing buyer could only afford £25,000, then the value of your beneficial interest would be £25,000. It is your interest in the property that has to be valued, not the property itself as a whole. Up to 10% of the costs of transferring the deeds are taken out of this figure, so in this example it would be £22,500 that the council would be take into account in your financial assessment.

It is important for someone proposing to buy your beneficial interest to make a reasonable offer. If, for example, you sold your beneficial interest to a joint owner (i.e. a family member) for an unreasonably low amount, the council may consider this to be 'deprivation of capital' i.e. an attempt to avoid using your capital to pay for care fees (see section 7).

Currently CRAG rules state that if the other joint owner(s) are not willing to buy your share of beneficial interest: 'it is highly unlikely that any outsider would be willing to buy into the property, unless the

financial advantages far outweighed the risks and limitations involved. The value of the interest, even to a willing buyer, could in such circumstances effectively be nil. If the local authority is unsure about the resident's share, or their valuation is disputed by the resident, again a professional valuation should be obtained'.

6.4 Adapting your property to accommodate or care for a parent

While there may be good intentions in adapting your property to accommodate/care for a parent(s), it could have implications, particularly where the older person is providing capital towards the purchase price, the mortgage or adaptation. In some cases, the older person may be seen to have a beneficial interest in the property (they contributed to the value of the property as a named owner) and CRAG would need to be followed when valuing the older person's interest in the property if and when the older person moved into a care home. Another implication is that, depending on when and why the move took place and the financial circumstances, the council may decide that 'deprivation of capital' has occurred (see section 7). It may be helpful to speak to Independent Age (tel.: 0845 262 1863; www.independentage.org) and/or seek legal advice from the Legal Services Agency (tel.: 0131 228 9993; www.lsa.org.uk) before deciding going ahead with these arrangement to discuss the issues.

6.5 Disputes about the valuation of beneficial interest

If there is a dispute between what you feel is the value of your beneficial interest in a property and what the council states is the value, CRAG recommends that the council seek a 'professional valuation'. You may also want to do this. You can find a qualified property surveyor by contacting the Royal Institute of Chartered

Surveyors (tel.: 0870 333 1600: www.rics.org). If the council arranges this, it will usually do so through their own district surveyor's department or through a contracted company. The surveyor's report should state the estimated valuation of your 'interest' (share) of the property to a prospective willing buyer. It should also set out the reasons for the valuation, the experience, factors and assumptions used to reach that valuation and the 'risk' a willing buyer would be taking in purchasing that share of the property (and how that 'risk' affects the valuation).

Beneficial interest can be a highly complex area of the financial assessment. It may require an examination of the facts of each case and comparison with any relevant legal cases (the cases we are aware of in England may apply to Scotland but this is as yet unclear despite attempts to clarify this) so you may want to contact an advice service , such as Independent Age (tel.: 0845 262 1863; www.independentage.org) and/or seek legal advice via the Legal Services Agency (tel.: 0131 228 9993; www.lsa.org.uk) if there is a dispute about the value of your beneficial interest for the financial assessment whether in a former council house (right to buy scheme) or not.

7 Deprivation of capital

If you deliberately give away your property or savings in order to avoid paying for your care home costs, this is called 'deprivation of capital'. The Department for Work and Pensions and the local council are entitled to take account of this capital as if it were still owned by you (notional capital), and the council may seek to make you (or another person who now has the capital) meet the cost of the care home fees accordingly. Deprivation of capital can also affect your benefit entitlement.

Some of the ways in which you may be considered to have deliberately deprived yourself of capital include:

- Giving away money before moving to a care home
- Transferring the ownership of your property to someone else; when you needed care or just before moving to a care home; or
- Spending your capital on something not necessary, for example, an expensive painting before moving to a care home.

The Department for Work and Pensions and the local council must look at your reasons (implicit and explicit) for giving the capital away and when you gave it away. For example, if you gave each of your grandchildren some money a few years before you needed any care, it may be 'unreasonable' for the council to assume that you gave the money away in order to avoid paying care home fees. However, if you signed your property over to your son two months before you went into a care home, the local council might decide that you did it in order to avoid having to sell the property to pay your care home fees. There is no time-limit on how far back the council can look at what they

consider to be 'deliberate' deprivation of capital. The individual circumstances of each case need to be looked at in their own right.

According to the guidance, avoiding paying care home fees does not have to be the only motive for a transfer of capital in order for it to be deliberate deprivation. It must, however, be a significant reason for transferring the capital. The important factors are the 'timing' of the disposal, the 'reasons' for the transfer of any capital and the perceived or actual 'intention' behind the transfer. Any decision by the council that it is/was 'deprivation of capital' has to be a 'reasonable' decision based on the information available to them. If you feel it is not a 'reasonable' decision, you may want to make a complaint (see section 17).

If you are found to have deliberately deprived yourself of capital to avoid paying care home fees, you will be treated as if you still had the capital 'notional capital'. If the notional capital added to your actual capital totals more than £24,750, the local council may assess you as being able to meet the full cost of your care, even though your actual capital is less than the upper capital threshold.

If the deprivation of capital involves transferring capital, such as property, it can have implications for you and/or for the person who receives the capital. The council may seek to 'transfer' the debt for care home fees to the person now in possession of the capital (if debt legislation allows for this).

8 Pension Credit

Pension Guarantee Credit is paid to top up the income of people on low incomes. If you receive Pension Guarantee Credit, it will be included as part of your income in the council's financial assessment for care home fees. If you receive financial help from the council towards your care home fees, any Pension Guarantee Credit you receive will go towards the hotel/ accommodation part of your care home fees. The council will expect you to claim Pension Guarantee Credit if you are eligible for it.

If you are one of a couple and only one of you is moving into a care home permanently, you may both need to claim Pension Guarantee Credit as individuals. Contact the Department for Work and Pensions (tel.: 08456 060 265) and ask for a review of your entitlement.

8.1 Pension Savings Disregard

If you receive Pension Savings Credit and receive help with your care home fees from the council, you may be eligible for a 'Pension Savings Disregard' of up to £5.80 a week for a single person, or £8.70 a week for a couple. The amount you receive will depend on your weekly income and is calculated at the time of the financial assessment. This is paid to you from your income in addition to your Personal Expenses Allowance of £23.50.

9 Disability benefits - Attendance Allowance and Disability Living Allowance

Attendance Allowance and Disability Living Allowance are non means-tested benefits. This means your income and savings are not taken into account in deciding your eligibility. Attendance Allowance is a benefit for people aged 65 and over who need regular care or supervision. Disability Living Allowance is a benefit for people under 65 who need regular care or supervision, or who have mobility problems.

If you receive financial help from the council (including the personal care payment) or NHS Continuing Healthcare funding, towards your care home fees, any entitlement you have to Attendance Allowance or the care component of Disability Living Allowance will normally stop after you have been in a care home for 28 days. This rule also applies if the council is applying the 12-week disregard to your property, as you will effectively be 'council funded' for those 12 weeks.

If you do not receive any financial assistance from the council to pay your care home fees, you can still claim Attendance Allowance and Disability Living Allowance (both care and mobility components). If you were not already claiming either of these benefits and you are going into a care home as a self-funder, contact the Department of Work and Pensions (tel.: 08457 123456) or the Benefits Enquiry Line (tel.: 0800 882 200) to get an application form.

10 When is it the local council's duty to pay more for my care home placement?

If you are eligible for support from the council towards your care home fees, the council should tell you the amount they usually agree to pay for someone with your level of care needs to stay in a care home. The amount they usually pay up to is called their 'standard rate' or 'usual cost'. There will be one standard rate for residential care and a higher standard rate for nursing care.

Until 2012, the standard rate appears to have been a national rate for Scotland, negotiated between the 'Confederation of Scottish Local Authorities' (CoSLA) and 'Scottish Care'. The standard rates for 2011-12 were £474.16 (for residential care) and £550.81 (for nursing care). CoSLA is, at the time of writing, reviewing this arrangement.

The care homes that the local council social work department suggest you move to, are usually those which are the council's 'preferred providers'. A preferred provider is a care home which agrees to make a contract with the council at the council's standard rate. You should not necessarily be limited to care homes that hold such contracts with the funding council (depending on local availability of care home placements). The rate that the council should pay for your care home fees should be based on your individual assessed needs as stated in your care plan. You should be given a copy of this care plan.

The Scottish Government guidance reminds local councils not to set 'arbitrary ceilings' on the amount they will agree to pay as a standard rate. Local councils should increase the amount they will pay, above

their standard rate, if the care home you have chosen (or that the council has placed you in) is the only care home with a vacancy that can meet your assessed needs. The council in such circumstances cannot routinely ask for a third party top up. An example would be when you need to move to a care home which is close to your family and friends to be able to maintain contact with them.

For more information about top ups, see our guide:

Care home fees: Third part top ups in Scotland (guide number 53).

10.1 When it is not the local council's duty to pay more?

The council has a duty to meet your assessed care needs, not your preferences. If you prefer a more expensive care home rather than the care home the council has chosen for you, which is available and can meet your individual assessed needs, then a 'third party', such as a relative or friend, can (if they want to) pay the difference between the cost of the care home you prefer and the council's standard rate so that you can live in the more expensive care home of your choice.

You may be able to pay your own top up for a limited time in certain situations. For example, your property is under a '12 week property disregard' (see section 5.1) or if you have a deferred payment agreement with the council (see section 5.3).

There appears to be discretion in the Scottish guidance for the council to decide whether to contract with the care home in full and collect the top up from the third party (which may be preferable) or whether the

council can contract with the care home for the standard rate and ask the third party to pay their contribution directly to the care home.

If a third party top up payment stops for whatever reason (the third party can no longer afford to pay it, a change of circumstances, etc) the local council is fully responsible for the cost of the placement (although you may be asked to move to a less expensive care home if no one else can pay the top up).

Although we would always recommend that you first see whether there are grounds (based on your care needs) to challenge a third party top up request, it may not be possible in some cases to challenge it. In some cases, charities or benevolent societies may be able to help you with a shortfall if a relative is unable to pay a third party top up (and you are unable to pay it yourself via a 12 week disregard or deferred payment). Turn2Us (tel.: 0808 802 2000; www.turn2us.org.uk) may be able to provide details of charities who may be able to help with a shortfall.

11 Paying your own care home fees (self-funders)

If you have more than £24,750 in capital you will not be eligible for financial help from the council towards the hotel/ accommodation costs of your care home fees. You will be known as a 'self-funder'. You will have to pay your own hotel/ accommodation costs of your care home fees until your capital depletes to the upper capital limit. If you have eligible care needs, you may still be eligible to receive 'personal care' and 'nursing care' payments from the council (worth up to £237 a week) towards the cost of your care home fees (see section 2). You should be able to choose any of the three routes for how you pay your care home fees (see section 15).

If you are eligible for and decide to accept the personal care payments towards your care home fees, you will not be eligible for Attendance Allowance or the care component of Disability Living Allowance after 28 days of being in the care home. If you receive Pension Credit, any 'disability premium' will also stop after 28 days (see section 8).

If you have significant savings and/or capital in a property, you may advice about the best ways to utilise this capital to pay for your care home fees in the long-term. An independent financial adviser (IFA) will be able to advise you on the different types of financial product available. You can find details of IFAs in your area by contacting Unbiased (www.unbiased.co.uk). The following organisations also offer financial products to pay for care home fees: Eldercare Solutions (tel.: 0800 082 1155; www.eldercare-solutions.co.uk), Paying for Care (www.payingforcare.co.uk) and Saga (tel.: 0800 096 8703;

www.saga.co.uk/money-shop/care-funding). Independent Age cannot recommend particular IFAs or companies offering financial products. We suggest you shop around to compare products and ensure you are getting the best product for your situation.

When your savings are within two to three months of reaching the upper capital threshold (currently £24,750), you should inform your local council of your situation. The council should then make the necessary arrangements to carry out a needs assessment or re-assessment for you as soon as possible.

If you continue to pay your own accommodation/hotel costs after your capital has decreased to below £24,750, despite having requested a needs assessment/re-assessment from the council, you should contact our advice service (tel.: 0845 262 1863; www.independentage.org) to discuss seeking a reimbursement of any savings you have used.

If the care home you are in, at the time your capital reduces to the upper capital threshold, costs more than the local council will usually pay for someone with your assessed needs, a third party may need to pay a top up fee to keep you in that care home (see section 10).

12 Temporary stays in a care home

You may move into a care home temporarily, perhaps to give the person who cares for you a break, or you may move into a care home for a trial period whilst you decide if you want to make it your permanent home.

A temporary care home placement is defined as one where you intend to return to your own home within 52 weeks. This should be clarified with social work before you move into the care home so that the correct financial assessment takes place.

If the council has assessed you as temporarily needing care in a care home, the council does not have to carry out a full financial assessment on you for the first eight weeks but may choose to do so. If the council's policy is not to carry out a full financial assessment for the first 8 weeks, you will be asked to pay what the council thinks is a 'reasonable' amount. If you are not happy with the amount you are charged, you can ask for it to be reviewed.

After eight weeks, the local council will follow similar rules for assessing your contribution to your care home fees as they do for permanent care home residents. The difference is that the council must ignore the value of your property, any financial commitments such as mortgage payments, and may also disregard some of your income to meet housing-related costs, that you might need to continue paying, if you plan to return home.

12.1 Eligibility for personal and nursing care payments

If you are temporarily staying in a care home following a needs assessment, the council should still pay any personal and nursing care payments (see section 2) to the care home on your behalf, if you are eligible for them and the council has agreed a contract for them with the care home.

12.2 Eligibility for benefits

Your eligibility to Attendance Allowance and the care component of Disability Living Allowance will normally stop after you have been in a care home for 28 days if you are part-funded by the council (you receive help with the accommodation/hotel costs or personal care payments) or fully-funded by the NHS (you receive NHS Continuing Healthcare funding). This may also affect any 'disability premium' you receive as part of Pension Guarantee Credit.

If you need to go in and out of a care home for short periods, there is a 'linking rule', meaning that the days for each stay will be added together if you leave and then re-enter the care home within 28 days. If you need regular stays in a care home to give your carer regular breaks, you should discuss this with a social worker so that it does not mean your Attendance Allowance or Disability Living Allowance is stopped (see section 9).

If you are receiving temporary care in a care home, you can continue to receive Housing Benefit, Council Tax Benefit or Pension Guarantee Credit for up to 52 weeks (possibly longer for Housing Benefit if your stay is unlikely to be substantially more than 52 weeks).

If you move into a care home on a trial basis because you are unsure whether you want to move permanently into a care home, you can continue to receive Housing Benefit, Council Tax Benefit and Pension Guarantee Credit for up to 13 weeks whilst you make this decision. Your property will be disregarded from the financial assessment until you decide whether you move to a care home will be permanent or not.

Some people go into a care home as a temporary resident and then, after a few weeks, decide to stay in the care home permanently. The council will reassess your finances when you become a permanent resident but you need to ensure that the council agrees that there is a need for permanent residential care. You may need to have a needs assessment or re-assessment. Any change to the amount you need to contribute to your care home fees following your re-assessment should only be applied from the time you became a permanent resident – not from the time you entered the care home.

13 Temporarily being away from a care home

You should ask the care home manager and/or your local council social work department (if they agreed the contract with the care home) about what would happen if you had to leave the care home temporarily, for example, to go on holiday with your family or to go into hospital. The contract agreed between the care home and the council and/or between you and the care home (depending on the contract route), should make it clear what will happen in these circumstances. If the contract does not state what will happen, you may want to ask that this is added to the contract.

If you are away from the care home temporarily because you have to go into hospital, you will continue to receive your usual amount of State Pension and/or Pension Guarantee Credit.

If you are 'absent' from the care home for more than 14 days, the council will stop making personal and nursing care payments to the care home.

14 Care funded by my local Health Board (NHS Continuing Healthcare)

NHS Continuing Healthcare is a package of care funded by the NHS. This care is usually provided in hospital but can be provided elsewhere, for example, in a care home. If you receive NHS Continuing Healthcare funding, you will not be expected to pay for any of the fees charged by the care home. Eligibility is not based on any single diagnosis but on whether you have 'primary health care needs' as opposed to social care needs. Whether you have primary care needs is determined by the nature, complexity, intensity, and unpredictability of your care needs and whether you need regular treatment or supervision by specialist NHS staff. The NHS Continuing Healthcare eligibility criteria is set out in the guidance 'CEL (2008) 6' available from:

www.sehd.scot.nhs.uk/mels/cel2008_06.pdf

To identify whether you meet the eligibility criteria, a continuing healthcare assessment will be completed by a health professional. The assessment is then summarised in the 'assessment summary' document which will then recommend whether or not you are, in the view of the professionals involved in the assessment, eligible for NHS Continuing Healthcare funding.

There appears to be a commitment to develop a 'decision support tool' to aid the assessment of eligibility as is the case in England and Wales but as yet this has not been finalised.

15 Arranging a contract with the care home

15.1 Contract routes

There are different ways you can contract with the care home for how you pay your care home fees. You should be able to choose one of three contract types:

- self-determined route
- mutual route
- integrated route.

The self-determined route is for self-funders who are responsible for paying for all of their care home fees. The contract is between you and the care home for all of your fees.

The mutual route (mainly for self-funders receiving personal care payments/nursing care payments) involves two contracts: one between the care home and the council for the personal care/nursing care fees and another between you and the care home for the hotel/accommodation costs.

The integrated route involves the council contracting with the care home for the full cost of your care home fees (including any hotel/accommodation costs, personal care payments and nursing care payments) and invoicing you for your assessed contribution from your weekly income. Even if you are a 'self-funder', you can choose the integrated route. This means that you will have more protection if there was a dispute over top up fees or care home fee increases.

15.2 What to look for in a contract

It is important to have a written contract and that this contract clearly sets out the agreed terms and conditions. Even if the council is contracting with the care home, you should always ask to see the contract to make sure it includes any special requirements as stated in your care plan and needs assessment.

The 'National Care Standards: Care Homes for Older People', available from www.scotland.gov.uk/Resource/Doc/205928/0054733.pdf applies to all care homes in Scotland. It states:

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

Things to be wary of in a contract:

- If it is not made clear how much you will have to pay, how often you will have to pay and who is responsible for the payment
- If the care home is excluded from liability for causing death or injury
- If the care home excludes itself from providing a service
- If the care home is excluded from looking after your property and possessions

- If the contract does not state what type of care you will receive i.e nursing care, personal care and/or dementia care
- If the care home excludes itself from responsibility if your clothes are damaged in the laundry
- If the care home is allowed to make significant changes to what it supplies to you without consulting you
- If the care home can change your room without consulting you
- If the care home can impose unreasonable restrictions or obligations on you
- If staff are able to enter your room without your consent
- If the care home has the right to keep or dispose of your property or possessions
- If the amount of notice required to end the placement (by the care home or yourself) is not clear
- If the terms are not clear about how long the fees are payable after death.

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

You should not sign a contract until you are sure what services the home will provide for you, what is expected of you and whether you feel you are happy with these arrangements. If you are unhappy with the contract you are being asked to sign you can discuss this with the council or care home manager in the first instance. You could also contact the Care Inspectorate (tel.: 0845 600 9527; www.scswis.com), Citizens Advice Consumer Service (tel.: 08454 04 05 06) or Citizens Advice Scotland (tel.: 0844 848 9600; www.cas.org.uk) for advice.

16 Moving to a care home in a different area

16.1 Moving to a different part of Scotland

Once you have had a needs assessment and the funding for your care home place has been agreed, you are free to choose a care home anywhere in Scotland. For example, you may wish to move to be near your family or back to the area where you were brought up.

If you are eligible for financial help with your care home fees from the council, it is the council for the area where you have been living (where you have been 'ordinarily resident') that will be responsible for carrying out your needs assessment and contributing towards your care home fees if you want to move to a care home in another council's area.

If you are already living in a care home and you are paying for your accommodation/hotel costs of your care home fees in full (i.e. you are a self-funder), but your capital later decreases to £24,750, it is the council where your current care home is (not the council where you were living in prior to going into a care home) that is responsible for contributing to your care home fees.

16.2 Moving to a different part of the U.K

You could choose to move to a care home in another country of the UK. If you move to a care home in England or Wales, you will need to arrange for a 'cross-border placement' with your local council's social work department following a needs assessment or re-assessment. The two councils (your present council and the new council) should work together and agree the process for arranging and paying for the

care home you have been assessed as needing. The new council (the council where you are moving to) will usually arrange the care home contract and pay the care home fees then seek reimbursement of the cost from your former council. The reimbursement will be the total amount for the care home fees minus the amount that you contribute each week from your income towards the care home fees.

If you have capital over £24,750 and move to another country in the UK, you may need to pay your care home fees in full until you reach the upper capital threshold in the country you have moved to (in England and Wales the upper capital threshold is £23,250). When you reach the upper capital threshold in the new country, you are normally seen as being 'ordinarily resident' there so will need to contact your new local council's social services department for help with your care home fees. This may or may not relate solely to the 'hotel/ accommodation' costs as you may be able to receive free personal care and nursing care from Scotland if you move to another part of the UK. You may want to ask the social services department where you now live for a needs assessment to include eligibility to free personal and nursing care.

If your care home place is part-funded by the council (because you have savings/capital under £24,750), you should always seek a needs assessment before moving to a different care home so that the council can agree the move and agree to part-fund the new placement (above and beyond free personal and nursing care payments).

16.3 What if the care homes cost more in the new area?

If you are part-funded by the council and you move to a more expensive council area, your local council may have to increase their 'standard rate' to enable you to move to a care home in the more expensive area. If the care homes in the new area all cost more than the care homes in the original council area, it is reasonable to expect the original council to pay at least the same standard rate as the council in the new area.

If you are part-funded by the council and move to a new area, you may want to ensure that your need to move to the new area is included in your care plan as an important social/psychological/emotional care need. This may support your argument that you should be helped to live in the more expensive council area.

If your former council does not want to pay more than its own standard rate for a care home placement in the new council area, the former council will have to provide proof that there is a care home available in the new council area that can meet all of your assessed care needs at the rate they are offering. If they cannot, the former council has to increase their standard rate to meet your care needs. Councils should not routinely seek a third party top up for the difference in fees (see section 10).

17 Challenging decisions

If you disagree with a decision or you are unhappy with the service provided by your care home, you can and should make a complaint. Firstly, you can raise the issue with the local council or care home staff and try to resolve the matter informally. If the complaint is not resolved, it may be necessary for you to make a formal complaint in accordance with the care home or local council's complaints procedure (if your care is part funded by the local council). The council complaints process is changing and new draft complaints processes are being consulted on at the time of writing.

As well as raising your complaint informally or formally with the care home/council, you can also make a complaint to the Care Inspectorate (tel.: 0845 600 9527; www.scswis.com) who register and regulate all care homes in Scotland.

If you have exhausted the council or care home complaints process, you can may be able to raise your complaint with the Scottish Public Services Ombudsman (tel.: 0800 377 7330; www.spsso.org.uk) as a last resort. They offer a free, independent and impartial complaints resolution service.

For more detailed information on making a complaint, see our guide: **Complaints about community care and NHS services in Scotland** (guide number 54).

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

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**Independent
Age**

Independent Age
6 Avonmore Road
London
W14 8RL

T 020 7605 4200
E charity@independentage.org
www.independentage.org
Advice line 0845 262 1863

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