

Factsheet 39 ● April 2010

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

### About this factsheet

This factsheet explains how being part of a couple can affect a care home resident's eligibility for local authority assistance with care home fees and both partners' eligibility for social security benefits during the period in care.

This factsheet covers a part of the overall residential charging rules and should be read in conjunction with our other factsheets on care home charging, particularly Factsheet 10, *Paying for permanent residential care*.

The information in this factsheet is correct for the period April 2010 – March 2011. Capital limits and other figures are expected to increase again in April 2011 but rules and figures sometimes change during the year.

This factsheet describes the situation in England. There are differences in the rules for funding care in a care home in Northern Ireland, Scotland and Wales. Readers in these nations should contact their respective national offices for information specific to where they live – see section 12 for details.

For details of how to order our other factsheets and information materials mentioned inside go to section 12.

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**Note:** Many local Age Concerns are changing their name to Age UK.

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# 1 Recent developments

- New, revised, social care eligibility guidance was introduced in February 2010 to replace the existing *Fair access to care services* guidance, which was introduced in 2003. This incorporates the new approaches developed as part of the Government's personalisation agenda and will need to be applied from April 2010. The new guidance is called *Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care, Guidance on Eligibility Criteria for Adult Social Care*.
- From October 2010, adults who fund their own residential or non-residential social care will have access to an independent complaints review service provided by the Local Government Ombudsman. This right is included in the *Health Act 2009*, which received Royal Assent (became law) in November 2009.
- Subject to legislation, new Regulations for the registration of all regulated adult health and social care service providers will commence in April 2010. This is with the Care Quality Commission. In a staged process adult social care services will be required to register on 1 October. This means that present registration under the *Care Standards Act 2000* continues until 30 September 2010.

## CRAG guidance

Local authorities must adhere to statutory guidance set down in a Government document called the *Charging for residential accommodation guide* (CRAG), which is written in support of *The National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977)*.

CRAG is updated each April and can be viewed and downloaded from the Department of Health website at:

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_097578](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_097578)

The information in this factsheet is mainly based on the statutory guidance in CRAG.

## Definitions

In this factsheet references to the 'local authority' or 'Council' usually mean the social services department of the local council. In areas with two-tier local government social services are provided by the county council.

The term 'couple' here is used to mean married couples, civil partners or couples who live together as though they are married or civil partners. The term 'resident' is used to refer to the person who is living in a care home.

The term 'care home' is used to mean any home registered under the Care Standards Act 2000. It includes local authority homes and independent homes, some of which provide nursing care as well as personal care. See above for registration changes planned for 2010.

## 2 Valuation of jointly owned capital

Where an asset (other than property) is jointly owned, the local authority treats each of the owners as having an equal interest in it until it is divided according to their actual interests. If, as a couple, you have joint assets and one of you enters a care home it may be a good idea to divide any joint capital before any fees are incurred.

For further information on care home funding see Factsheet 10, *Paying for permanent residential care* and Factsheet 38, *Treatment of property in the means test for permanent care home provision*.

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**Example:** If one of a couple with £50,000 in a joint account enters a home then that resident would be assessed as having £25,000 – £2,000 above the upper capital limit. However £4,000 would have to be spent from the joint account before the overall total fell to £46,000 and the resident's apparent share to £23,000. Dividing the joint account at the outset saves the couple having to spend more capital than is necessary before the resident's assessed share falls below the upper capital limit.

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### 3 Temporary residents

The local authority does not have to carry out a financial assessment for the first eight weeks of care in a care home but can instead charge what it thinks is reasonable. Social security benefits are not affected by the local authority's calculation.

When assessing how much a temporary resident should contribute, local authorities have been instructed to carefully consider the needs of couples over 60 who receive Pension Credit, as they may receive less benefit than younger couples in the same situation.

If as a couple you receive Pension Credit and one of you enters a care home for a temporary stay, Pension Credit will continue to be paid as if you were both still at home.

While a resident's stay in a care home is temporary, allowance should be made for some household expenses. This stops once the stay is permanent but the local authority might exercise its discretion to increase the resident's Personal Expenses Allowance.

See Factsheet 58, *Paying for temporary care in a care home*, for further information on this subject.

### 4 When one of a couple goes into a care home

When you are a couple and one of you goes into a care home it is important that you are aware of how the rules work and whether you need to make any claims for benefit either in your own right or as a couple.

#### 4.1 The local authority rules

The upper capital limit above which a care home resident is expected to meet the full cost of his or her accommodation and personal care is now £23,250. When assessing how much capital and income a resident has, the local authority will include assets held in the resident's sole name and a share of any assets held in joint names.

The authority cannot include capital or income belonging to the resident's partner in the assessment. Local authorities should not use joint assessment forms that ask for details of both partners' finances.

## 4.2 Pension Credit rules

If you are a couple and one of you goes into a care home on a permanent basis, the Pension Service then has to treat you as two separate individuals in assessing eligibility for Pension Credit. For both the resident and the person remaining at home eligibility for benefit will depend on the level of their individual income and capital. Any jointly owned capital will be divided. If the resident is passing 50% of a private pension to his/her spouse, then the Service will count it as income for the person at home.

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**Note:** The Government has issued new English guidance, which comes into force from 6 April 2010. This provides for the qualifying age for those social security benefits and concessions where provision is aligned with the age at which women become eligible for state pension, to increase from 60 to 65 between 6 April 2010 and 5 April 2020. Eligibility for benefits and concessions that are tied to the state pension age for women may affect both men and women. These changes affect Pension Credit and a number of other benefits and concessions. For further information see the Directgov website: [www.direct.gov.uk/en/Pensionsandretirementplanning/StatePension/DG\\_069498](http://www.direct.gov.uk/en/Pensionsandretirementplanning/StatePension/DG_069498)

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## 5 Where a couple both go into a care home

### 5.1 Local authority rules

The local authority has to assess you as individuals regardless of whether you go into the same home together. You should be means tested separately based on your own capital and income (including your share of any jointly held assets). If you have less than £23,250, you may qualify for local authority assistance.

If you are being treated as a couple for Pension Credit, and so are being paid the couples rate rather than the amount for two individuals, the authority should disregard up to £8.60 per week of any qualifying income for the Savings Credit part of Pension Credit.

## 5.2 Pension Credit rules

In most cases a couple who both enter a care home on a permanent basis will be treated as two separate individuals, even if they share a room in the same care home. The Pension Service will look at your particular circumstances before deciding whether to treat you as two individuals or a couple.

If you go into different homes, or live in different sections of a home, which is registered to provide both accommodation with personal care and accommodation with nursing and personal care, there should be no problem arguing that you should be treated separately.

## 6 Disregard of private and occupational pensions

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

Where one of a couple who are married or have a civil partnership enters a care home, 50% of that person's occupational (works) pension, personal pension or payment from a retirement annuity contract can be passed back to the person remaining at home. The 50% passed back is disregarded (ignored) in the means test when calculating how much the resident can pay, so that it can be passed back to the spouse or civil partner.

### **The disregard only applies where:**

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

### **The disregard does not apply to:**

- partners who are neither married nor civil partners (but see the discretion to increase the Personal Expenses Allowance below);
- residents who pass an amount other than 50% of their relevant income to their spouse or civil partner.

The resident is not obliged to pass this money back to the spouse but the disregard can only be applied where money is actually being passed back. If the resident dies, or the couple divorce or end their civil partnership, or the other person moves to live in the same care home as the resident, then the disregard will cease.

If the spouse or civil partner is already legally entitled to part of the resident's private pension (for example, because of a Court Order) then this amount will be treated as already belonging to the spouse. The resident can then pass 50% of the rest of the private pension to his or her spouse as well as the amount covered by the existing arrangement.

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**Note:** The person eligible to receive the disregarded income does not have to accept it. To do so may affect entitlement to means-tested benefits such as Pension Credit, Housing Benefit or Council Tax Benefit. If you are unsure whether receiving this money will leave you better off, seek further advice from one of the agencies mentioned on section 11.

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If someone else is managing the resident's finances under a Lasting Power of Attorney (LPA) or an Enduring Power of Attorney (LPA), the attorney can usually decide whether to pass any private pension income back to a spouse or partner, including situations where the attorney is the person who will receive the money. An exception will be if the donor has imposed specific restrictions or conditions in the Power of Attorney preventing this.

See Factsheet 22, *Arranging for others to make decisions about your finances or welfare*, for more detailed information.

## 7 Increasing the Personal Expenses Allowance

The local authority has to allow the resident to retain a Personal Expenses Allowance (PEA) of £22.30 per week. You should not be asked to put your PEA towards the basic cost of your care.

Local authorities have a discretionary power to vary the Personal Expenses Allowance (PEA) above the national set level in a range of circumstances. The Government document *Charging for residential accommodation guide* provides examples to assist local authorities in the use of this discretionary power.

If they do so, part of your income, which would otherwise be paid towards care costs, can be made available to a partner at home. This can be particularly helpful for couples who are neither married nor civil partners and so are not covered by the 50% disregard set out in section 6.

Any money passed back in this way may affect the partner's eligibility for means-tested benefits. If the partner currently receives any such benefits it may be worth checking whether they will in fact benefit from receiving some of the resident's income in this way.

If it seems that the partner would benefit from an arrangement of this type, ask the local authority to use its discretion to allow the resident to have an increased Personal Expenses Allowance to help support the partner at home. This is a discretionary power so the local authority does not have to agree but if they refuse your request without properly considering it you can use the complaints procedure to have the decision reviewed.

The Department for Work and Pensions does not recognise this discretion and will assess the resident's eligibility for Pension Credit as if this money was still available to the resident. The local authority should adjust the resident's assessed contribution to take account of any resulting shortfall in benefits income.

## **8 When a partner wants to move from a jointly owned house**

When one of a couple enters a care home on a permanent basis the local authority has to disregard the resident's interest in their former home for as long as the other spouse or partner remains there. However, the partner or spouse may at some point wish to move from that property, perhaps to somewhere smaller and more manageable. Once the original property has been sold, the disregard ends and the resident's share of the proceeds could be taken into account in the financial assessment.

Government guidance says that, where necessary, residents should be able to use part of their share of the sale proceeds to enable their spouse to buy a more suitable property.

Unmarried partners or other relatives benefiting from a disregard should ask to be treated in the same way. The guidance does not specify how any capital remaining after the purchase of the new property should be treated and local authorities have adopted different approaches to this.

See Factsheet 38, *Treatment of property in the means test for permanent care home provision*, for more details.

## 9 Married couples – liable relative payments

The Department of Health abolished the liable relative rule in April 2009, having included this change of law in the *Health and Social Care Act 2008*. You should not be asked to pay a liable relative payment after this date, even if you were previously paying one.

## 10 Managing a spouse or partner's affairs

### 10.1 Appointeeships

If a person receiving social security benefits is unable to manage his or her affairs, the Secretary of State for Work and Pensions (through the local social security office) can appoint someone else to exercise on behalf of the claimant (the person in the home) the right to make claims and receive benefit on behalf of the resident. An appointee would normally be a close friend or relative who visits the older person regularly. As a 'last resort', the home owner can act as appointee, but in such cases he or she must keep a record of the money collected on the person's behalf. Appointeeship only covers social security benefits. The claimant and the prospective appointee will be interviewed before any appointment is made.

### 10.2 Legal arrangements for looking after someone else's financial affairs, welfare and healthcare

While you are able to make decisions, you may want to consider how you would want your affairs dealt with if you lose the capacity to do this in future.

On 1 October 2007, the *Mental Capacity Act 2005* was implemented in full. It made provision for the replacement of the previous system of Enduring Power of Attorney (which covered financial and property affairs) and Receivership under the Court of Protection, with a Lasting Power of Attorney and the new role of Deputy under the Court of Protection. As a result, from 1 October 2007, as well being able to choose someone to take financial and property-related decisions on your behalf, you can also choose someone to take welfare and healthcare decisions by using a Lasting Power of Attorney.

Existing Enduring Powers of Attorney are still valid under the new legislation. It is also possible to replace an Enduring Power of Attorney with a Lasting Power of Attorney if you have the capacity to make the decision yourself.

Factsheet 22, *Arranging for others to make decisions about your finances or welfare*, has more detailed information on Powers of Attorney and the role of the Deputy under the *Mental Capacity Act 2005*.

## 11 Useful organisations

### The Care Quality Commission

The independent regulator of adult health and social care services in England, whether provided by the NHS, local authorities, private companies or voluntary organisations. Also protects the rights of people detained under the Mental Health Act.

Tel: 03000 616 161

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

### Carers UK

National charity working on behalf of carers. Offers wide range of information on carers' rights and sources of help and contact details for local carers' support groups.

Tel: 0808 808 7777 (free call)

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

## **Citizens Advice Bureau (CAB)**

National network of free advice centres including advice about national housing provision.

Tel: 020 7833 2181 (for contact details only – not telephone advice)

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

## **Counsel and Care**

A charity that provides advice for older people, their families and professionals on community care and other issues.

Tel: 0845 300 7585 (lo-call rate)

Website: [www.counselandcare.org.uk](http://www.counselandcare.org.uk)

## **Department of Health**

Government department with overall responsibility for social care including residential care homes.

Tel: 020 7210 4850 (national call rate)

Website: [www.dh.gov.uk](http://www.dh.gov.uk)

## **Elderly Accommodation Counsel**

Provides information on all forms of accommodation, support and care for older people.

Tel: 020 7820 1343

Website: [www.HousingCare.org](http://www.HousingCare.org)

## **Pension Service (The)**

For details of state pensions, including forecasts and how to claim your pension.

Tel: 0845 60 60 265 (lo-call rate)

State Pension Forecasting Team: 0845 3000 168 (lo-call rate)

## Relatives & Residents Association (The)

The Relatives & Residents Association gives advice and support to older people in care homes, their relatives and friends.

Tel: 020 7359 8136

Website: [www.relres.org](http://www.relres.org)

## Veterans UK

Website bringing together services for veterans including advice on pensions, compensation and welfare services.

Tel: 0800 169 22 77

Website: [www.veterans-uk.info](http://www.veterans-uk.info)

## 12 Further information from Age UK

Visit the Age UK website, [www.ageuk.org.uk](http://www.ageuk.org.uk), or call Age UK Advice free on 0800 169 65 65 if you would like:

- to order copies of any of our information materials mentioned in this factsheet
- to request information in large print and audio
- further information about our full range of information products
- contact details for your nearest local Age UK/Age Concern.

## Books from Age UK

We publish a wide range of books for older people and those who care for and work with them. The following title may be of particular interest:

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### Your rights to money benefits 2010–2011

All you need to know about the full range of benefits for the over 60s.  
£5.99

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To order this book visit [www.ageuk.org.uk/bookshop](http://www.ageuk.org.uk/bookshop) or to request a free books catalogue please call our book order line 0870 44 22 120 (lo-call rate).

## Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65

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

In Wales, contact:

Age Cymru: 0800 169 65 65

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

In Scotland, contact:

Age Scotland: 0845 125 9732

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

In Northern Ireland, contact:

Age NI: 0808 808 7575

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

## Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and through calls to Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 80 80 (8.30 am–5.30 pm) or visit [www.ageuk.org.uk/donate](http://www.ageuk.org.uk/donate)

## Legal statement

Age UK is a registered charity (number 1128267) and company limited by guarantee (number 6825798). The registered address is 207–221 Pentonville Road, London, N1 9UZ. VAT number: 564559800. Age Concern England (charity number 261794) and Help the Aged (charity number 272786) and their trading and other associated companies merged on 1 April 2009.

Together they have formed Age UK, a single charity dedicated to improving the lives of people in later life. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.

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