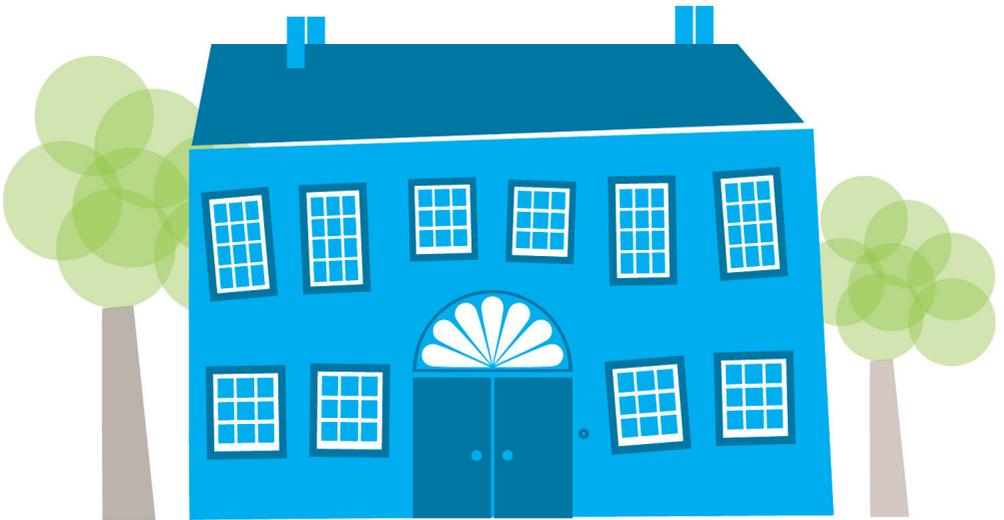


April 2020



# Care Home Guide: Funding

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# Introduction

This guide provides information about the financial help which may be available from the local council for older people who have been assessed as needing care in a care home. It is designed to answer the majority of enquiries from older people and their families.

Your local council's social work department (or in some areas, the local health board) is responsible for assessing your need for care services and working out what financial support you may be entitled to. You can find their number in your phone book or call the **Age Scotland helpline** on **0800 12 44 222** and we will find the number for you.

This guide does not explain the rules for social security benefits such as Pension Credit and Attendance Allowance that are paid by the Department for Work and Pensions; they are not the same as the rules about care home funding.

When this guide refers to couples or partners, this usually means married couples, civil partners or people who live as though they are a married couple or civil partners.

In this guide we use the term care home to mean any care home registered with the Care Inspectorate in Scotland. It includes council homes and homes run privately and by charities, some of which provide nursing care as well as personal care.

The information in this guide is correct as at April 2020. If you want to check that you have the most up-to-date copy of this guide, contact the **Age Scotland helpline** on **0800 12 44 222**.



# Care needs assessment

Your council's social work department (or in some areas, the local health board) has a duty to carry out a care needs assessment if you ask for one and you appear to them to be in need of community care services which they may provide or arrange.

The assessment will be carried out by a professional such as a social worker or NHS occupational therapist. They will look at the type of help and support you need and then decide whether they can provide care services to meet your needs. Care services could include services in your own home or in a care home.

When assessing you, they should take account of your views and the views of any carers you have. Each council can set its own eligibility criteria for different types of services. If the council agrees to provide or pay for a service, you should be given written information about this in a care plan.

After the assessment, the council may decide that they can best meet your needs in a care home. They have a duty to make the arrangements for you unless you, or someone acting on your behalf, wants to and is able to make the arrangements.

There should be no unnecessary delay in the council arranging a place for you; if a delay cannot be avoided they should make suitable arrangements to meet your care needs in the meantime.



If you want to arrange your own place in a care home and can afford to pay for it yourself, it is still a good idea to ask the council for a care needs assessment if:

- you would like advice about what type of care will best meet your needs and what services are available
- you think you may need financial support in the future
- you are paying for your care yourself, but want to have access to the Free Personal and Nursing Care payment.

Your care needs assessment should be updated if your need for care changes.

After the care needs assessment, the council will assess what financial help you may be entitled to.



# Care home funding assessment

You will be expected to pay towards the cost of your accommodation in a care home from your income such as your State Pension, and from your capital if you have capital of more than £18,000.

Before you can receive any financial assistance from the council, it must:

- carry out a care needs assessment for you
- decide if any of your assessed needs come under Free Personal and Nursing Care Free Personal and Nursing Care
- carry out a financial assessment to work out how much financial help you can get towards the rest of your care home fees.

The financial assessment looks at how much income and capital you have. There is more information about income and capital later in this guide. It applies if you move into a care home permanently, and it may also apply if you are a temporary resident (see section 8 for information about temporary residents).



## Free Personal and Nursing Care

In Scotland, personal care and nursing care are free to anyone who has been assessed as needing them.

If the council decides that your needs can best be met in a care home, you may qualify for one or both types of free care.

The council will make a payment to the care home to cover this part of your care.

From April 2020, the amounts the council will pay to the care home for your personal and nursing care are:

- £180 per week for personal care
- £81 per week for nursing care
- £261 to cover both personal care and nursing care.

The council will only pay the rate for nursing care if you have been assessed as needing it and you move to a home where 24-hour nursing care is available.

Once you have been assessed as needing care in a care home, the council will set up a contract with the home. The personal and nursing care payments can only begin once this contract is in place, so if you are making your own care home arrangements, check that the council will be ready to make payments from the day you move in.



## What the council can pay

Each year the council sets **standard rates** for residential care and nursing care. These rates will be used to calculate how much you will need to pay towards your care home fees.

If you decided to move into a care home that charges more than the standard rate per week, for the level of care you are assessed as needing, a **top-up payment** from a third party such as a relative or charity would be needed to cover the difference.

The standard rates are currently:

- £614.07 per resident per week for residential care
- £714.90 per resident per week for residential and nursing care

The rates have not yet been announced for 2020 – 2021, so are likely to change during this financial year.

# Financial assessment: Capital

Most types of capital and savings will be included in the council's financial assessment for permanent residents, including bank or building society accounts, national savings accounts, premium bonds, stocks and shares, and property (buildings or land).

The amount of capital you have affects how much means-tested help the council can provide towards your care.

## Capital limits from April 2020

If you have **capital above £28,500** you will be assessed as being able to pay for your care yourself and will not receive means-tested help from the council. You will still receive the non means-tested Free Personal and Nursing Care payments if you are assessed as needing these types of care.

If your **capital is between £18,000 and £28,500**, you will be expected to make some contribution from your capital towards your care costs but you may receive some means-tested help, depending on your income. The council will assess you as having an extra weekly income of £1 per £250 (or part of £250) you have over £18,000. This is called a **tariff income**.

**If your capital is below £18,000** this will be ignored and not included in the means-test.

## Disregarded capital

Some capital is disregarded or ignored. Capital which is completely disregarded includes the surrender value of life insurance policies, personal injury compensation which is in a trust or administered by a court, and personal possessions (as long as they were not bought with the intention of using up savings to avoid care costs).

Capital held in a discretionary trust may not be treated as your capital as you do not have free access to it. The rules about trusts are complicated. Seek legal advice if you are considering setting up a trust.

## Jointly held capital

If you are being assessed, only capital in your name should be included in the means test for care fees.

If you have joint capital with someone else, the council will assume each joint owner has an equal share unless you can provide evidence that this is not the case. If you have a joint bank or building society account, for example with a spouse or civil partner who is not moving into a care home, half of the account balance will be included in your financial assessment.

If you are part of a couple who has savings, and one of you moves into a care home, it may be useful to split the savings equally into two accounts, one in each of your names. See the section about jointly-owned savings on page 33 for more information.

## Notional capital

This is capital which may be included in the means-test even though you do not actually have it. It could be capital you could get if you asked for it, such as money in a trust that you have access to or a pension you have deferred. It could also be capital that you have deliberately disposed of to avoid using it to pay for your care. For example, if you have given away a property, the council may decide that you did this to reduce the amount of care home fees you have to pay. They would then carry out the financial assessment as though you still owned the property.

## Valuation of capital

Capital other than cash is given a market value. For stocks and shares or property, this is the amount they would be expected to sell for on the open market. For Premium Bonds, it is the surrender value.

If an asset (for example a property) would need to be sold to release money from it, 10% of the market value will be ignored in the financial assessment to allow for sale costs. The value of any mortgage or secured loan will also be deducted.

Once the property has been sold, you will be treated as having your actual share of the sale proceeds after any mortgage, secured debts and sale costs have been paid.

If your capital is significantly more than £28,500 then a precise valuation will not be needed because you are expected to pay for your care costs yourself, apart from any Free Personal and Nursing Care contribution.

## Treatment of the value of your home as capital

If you own your own home, how it is treated in the financial assessment will depend on the circumstances. It may be included, disregarded for a period of time or disregarded completely.

### 12-week disregard

If you enter a care home permanently, the value of your home is disregarded for 12 weeks. The purpose of the 12-week disregard is to allow time to sell the property. If you sell the property before the 12 weeks have passed, the disregard will stop when the property is sold.

If you enter a care home as a temporary resident, the value of your home is disregarded during the temporary stay. If the stay then becomes permanent, the value of the property will be disregarded for 12 weeks from the date the stay becomes permanent.

Following the council's 12-week disregard of your property's value you may be able to enter into a deferred payment agreement if you have not yet managed to sell your property, or if you don't want to sell it. See page 12 for information about deferred payment agreements.

## Property that is disregarded

The value of the home you lived in before moving into a care home will be disregarded in your financial assessment if it is occupied by any of the following:

- your partner (unless you are estranged or divorced from them)
- a relative<sup>1</sup> who is aged 60 or over
- a younger relative who is 'incapacitated'. This usually means someone who receives or meets the criteria for a disability- or health-related benefit
- a former partner from whom you are divorced or estranged, who is a lone parent with a dependent child
- a child under 16 years whom you are liable to maintain.

The council can also choose to disregard the value of the property where it is the home of someone else not included on the above list, such as:

- a relative under 60 who had been caring for you for a substantial period
- a friend who is over 60, particularly if they have given up their own home to move in with you.

Other partners or relatives can ask the council to use their discretion to disregard the property, although the council may not be willing to do so.

If a property is being disregarded because a care home resident's partner lives there, there may be a time when that partner wants or needs to move. This could be, for example, because they need to live somewhere more accessible or closer to family. If needed, the council should disregard the care home resident's share of the sale proceeds, to allow the move to go ahead.

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<sup>1</sup>Relative includes parent, parent-in-law, brother, sister, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter (or the husband, wife or partner (including civil partner) of any of those previously mentioned), grandchild, grandparent, uncle, aunt, niece, nephew.

## Council deferred payment agreement

A deferred payment agreement is a legal agreement between a council and an individual to defer payment of the care home fees. Instead of needing to sell the former home straight away, the agreement enables the fees owed to the council to be repaid when the property is sold at a later date.

Councils must have a discretionary scheme in place to consider applications for deferred payment agreements and must make care home residents and potential residents aware of it. The council may be cautious about setting up a deferred payment agreement if there is an outstanding mortgage, equity release loan or other debt secured against the property, or if the amount of the deferred payment will be very high.

You can only be considered for a deferred payment arrangement if:

- you have been assessed as needing care in a care home
- your capital (excluding the value of the property) does not exceed £18,000
- you have insufficient income to pay your care home fees
- your property is not already disregarded under one of the other rules
- you do not wish to or are not able to sell the property quickly enough to meet the care home fees
- you are able to grant a **standard security** against the property – this means you can't sell or transfer the property without repaying the amount owed to the council.

You should seek independent legal and financial advice if you are thinking of entering a deferred payment agreement.

You might also need to think about:

- how quickly properties are selling in your area
- options for investing the proceeds if you decided to sell the property
- insurance costs if the property is empty or rented out
- legal responsibilities if you are thinking of becoming a landlord
- the impact on any means-tested benefits you claim, if you start receiving rent payments
- maintenance costs.

Before signing the deferred payment agreement, you should make sure you understand the arrangement you are entering into fully. You should check what you will need to pay upfront, for example the council's land registry fees and other legal expenses.

The agreement will last either until the date you sell your property, or until 56 days after your death.

During the period of the agreement no interest can be charged, but if the property hasn't been sold by 56 days after your death, interest may be added.

If your request for a deferred payment is refused you can challenge this decision using the council's complaints procedure.

If you have a deferred payment agreement, you may also need to make a contribution to your care home fees from your income and/ or other capital. You should check that the amount being paid by the council under the deferred payment arrangement plus the amount you are contributing will cover the care home fees in full.

### **Example:**

A single man, aged 80, has a State Pension and an occupational pension with a combined weekly value of £200. He owns a house valued at £100,000 which will be unoccupied when he moves to the care home. He also has £10,000 in capital.

If he is assessed as needing Personal and Nursing Care and the care home fees were £700 per week he would be expected to meet the full cost of his care from his income and capital, less a Free Personal and Nursing Care payment of £261 (2020/2021 rate).

He therefore needs to find £439 per week from his income and capital to meet the weekly fees. If he entered into a deferred payment agreement the council would expect him to contribute his income of £200 less a personal expenses allowance of £28.75 (2020/2020 rate), so he needs to contribute £171.25 per week.

The deferred amount is therefore the weekly fees of £700, less his contribution of £171.25, and less a Free Personal and Nursing Care payment of £261. The deferred amount is £267.75 per week and this will be recovered by the council after the eventual sale of the property.

## Charging orders

The council cannot force you to sell your property without a court order. However, if you own a property that can't be disregarded, and you don't pay your contribution to care costs, the council can register a **charging order** against your property and reclaim the money they are owed when the property is sold. They do not need your permission to create a charging order but they should write to advise you that a charge is being registered. You should seek legal advice from a solicitor if the council advises you that they will be seeking a charging order.

The amount owed to the council will increase over time if you are not paying your assessed contribution to the care home fees. However, if your capital less the debt falls below £28,500, you may be entitled to help with the fees.

If the council wants to make you sell your property, they must apply for a court order. The court will look at the circumstances and decide whether it is reasonable to force you to sell it.

## Valuation of jointly-owned property

If you are the joint owner of a property, the council must value your **beneficial interest** in the property rather than the property itself. This is the amount of money you would receive if the property were sold.

The value of your beneficial interest will depend how likely it is that someone would want to buy share.

If another joint owner lives in your home and is prepared to buy your share, your beneficial interest in the property is the amount they are willing to pay for your share.

If another joint owner lives in the property, it is unlikely that a buyer could be found for your share on the open market. In this situation the value of your share could be very low, or even nil.

The council should have your property valued professionally if there is uncertainty or dispute about the value of your beneficial interest.

In some cases, councils have advised joint owners that they must either sell the jointly-owned property or buy out the care home resident's share. You should get legal advice if this is your situation.

If someone else has been paying bills and contributing to the running costs of your home, they may be able to show they have a beneficial interest in the property even if they are not a joint owner. If their beneficial interest can be established, the property will be valued as if it is jointly owned, meaning only your share will be taken into account. This is a complex legal area. Consult a solicitor for more information.

## Renting out property

Some people who move into a care home permanently choose to rent out their property, and use the rental income, together with their existing income, to pay the care home fees. If you are considering this you should get advice about the legal responsibilities, costs and risks of becoming a landlord.

You can find information about landlords' responsibilities on the Scottish Government website [www.mygov.scot/renting-your-property-out/registration](http://www.mygov.scot/renting-your-property-out/registration) or contact your local Citizens Advice Bureau for advice.

# Financial assessment: income

For the council's financial assessment for permanent residents, income in your name will be looked at and will be either:

- completely disregarded
- partly disregarded
- taken fully into account

Income could include:

- State Pension
- occupational or works pension
- personal pension
- Pension Credit
- tariff income from capital

## Income that is disregarded

Some income will be disregarded in the financial assessment.

Common disregards include:

- the mobility components of Disability Living Allowance or Personal Independence Payment
- War Disablement Pension and Armed Forces Compensation Scheme payments
- War Widow's Special Payments - the special war widow's pension of £97.95 per week introduced April 1990 for 'pre-1973 war widows' (in addition to the £10 partial disregard for war widows described below)
- the £10 Christmas bonus paid with some benefits
- actual income from savings (instead, a tariff income will be included in the calculation - see page 7 for more information)
- certain charitable and voluntary payments given to pay for a specific item not covered by the care home's fees
- any payments of Child Tax Credit or Guardian's Allowance.

## Income that is partly disregarded

Some kinds of income are partly disregarded, such as:

- £10 per week of a War Widow's Pension.
- £20 per week of certain charitable or voluntary payments to help with expenses already covered by the council's contract with the home, for instance for food or heating.
- 50% of a private pension, if this is paid to a spouse or civil partner who doesn't live in the same care home.

## Savings Disregard

If you have reached State Pension age, you may be entitled to a savings disregard, depending on your weekly income. The rules for this are linked to the rules for the savings credit element of Pension Credit and the amount you receive will depend on your qualifying income:

### Single people

WEEKLY INCOME	AMOUNT OF DISREGARD
Less than £144.38	Nil
£144.38 to £167.25	Your actual savings credit award or £6.75, whichever is less
Over £167.25 <b>and</b> you receive savings credit	£6.75
Over £201.55	£6.75

### Couples

WEEKLY INCOME	AMOUNT OF DISREGARD
Less than £229.67	Nil
£229.67 to £255.25	Your actual savings credit award or £10.05, whichever is less
Over £255.25 <b>and</b> you receive savings credit	£10.05
Qualifying income above the limit for receiving savings credit	£10.05

## Social security benefits

Whether you are single or part of a couple, the council will expect you to claim all the social security benefits you are entitled to when you move into a care home. They will need to see details of the benefits you are receiving and may need to contact the Department for Work and Pensions too.

## **Disability related benefits (care components)**

If you receive Attendance Allowance, the care component of Disability Living Allowance or the daily living component of Personal Independence Payment, these will stop after 28 days in a care home if you are receiving the Free Personal Care contributions. These benefits are not affected if you only receive the Free Nursing Care contributions or are not receiving any funding at all from the council.

# Financial assessment: calculations

Once the council has full details of your income and savings, they can calculate how much you should contribute towards the costs of your care. After the assessment you should always be left with a weekly amount of £28.75, your **Personal Expenses Allowance**. This is a small amount to cover items not included in your care plan, for example hair appointments or trips out..

The council should give you full details of their calculations in writing and make it clear what you have to pay. If they agree that you qualify for Free Personal and Nursing Care payments, they will pay them directly to the care home. This should be clear on the financial assessment.

The examples on the following pages show how the calculations are made.

## Example 1

The council arranges for you to move permanently into a care home run by a charity because the council has agreed that you need nursing care. The standard rate for the care home is £700 per week, which is within the local council's usual limit for publicly-funded residents of £714.90. You are 83, single and previously lived in a rented flat. You have capital of £7,500 and your weekly income is a State Pension of £129.20, and Guarantee Pension Credit of £44.55 giving you a total of £173.75 per week.

**What is ignored:** Your capital, because it is less than £18,000.

**What is included:** Your Pension Credit and State Pension both count in full as income.

**Table 1. Local council financial calculation example 1**

WEEKLY INCOME			CALCULATION OF COST OF HOME		
		£			£
State Pension		129.20	Weekly cost of the home		700.00
Pension Credit Guarantee	+	44.55	your contribution	-	145.00
<b>Total weekly income</b>	=	<b>173.75</b>	<b>Local Council contribution</b>	=	<b>555.00</b>
Personal Expenses Allowance	-	28.75			
<b>Your contribution</b>	=	<b>145.00</b>			

Because of the rules about Free Personal and Nursing Care in Scotland, the council’s contribution to care home fees should be at least £180 if you have been assessed as needing personal care, and at least £261 if you have been assessed as also needing nursing care. In the example above, the council contribution is £555 which includes the Free Personal and Nursing Care payments.

## Example 2

The Council agrees to arrange a permanent place for you to enter a care home which costs £700 per week.

You are married, aged 82, with a weekly private pension of £164.00. Your wife will remain living in the flat you jointly own. Your State Pension is £129.20 per week. You have a savings account in your name of £18,000 and a joint account with your wife of £6,000.

**What is ignored:** The value of your flat is ignored because your wife continues to live there. Half of your private pension (£82) is ignored by the council if you are paying this half to your wife.

**What is included:** Your savings of £18,000 are included in the council calculation, together with half of the balance of the joint account you hold with your wife, £3,000. Your total capital will be assessed as £21,000, so you will have a **tariff income** of £12 per week (£1 per £250 or part of £250 you have over £18,000).

Your State Pension (£129.20), the other half of your private pension (£82) and your tariff income (£12) are included as income.

You are not entitled to any Pension Credit because your income is too high.

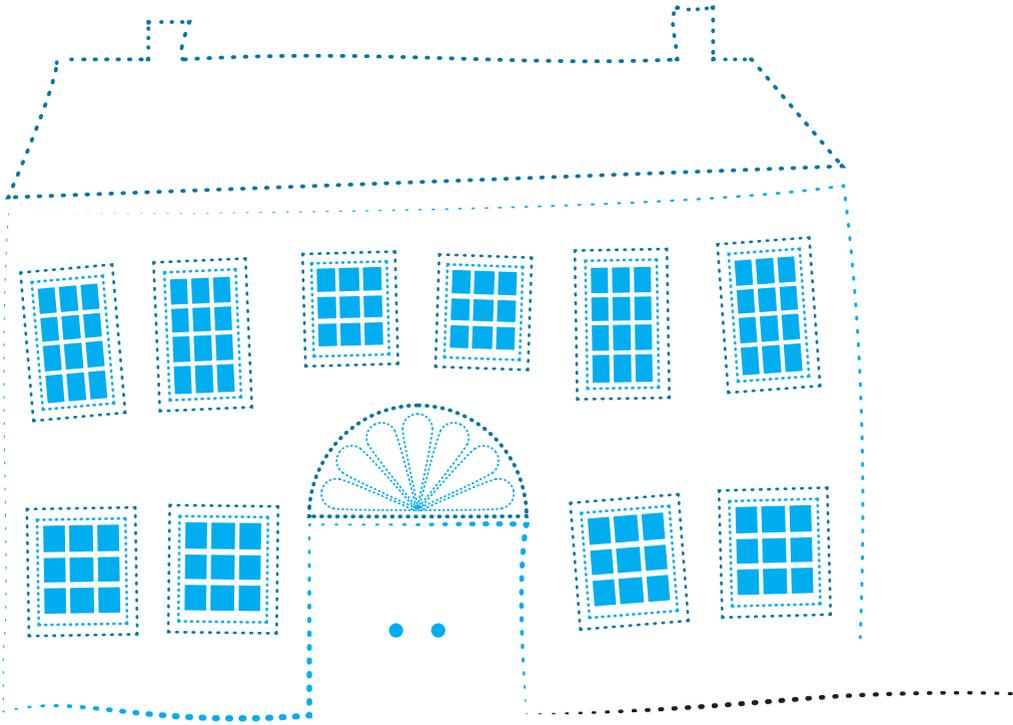
However, as your income is higher than the limit for receiving Savings Pension Credit, you qualify for a savings disregard of £6.75 per week in addition to your Personal Expenses Allowance of £28.75.

**Table 2. Local council financial calculation example 2**

WEEKLY INCOME			CALCULATION OF COST OF HOME		
		£			£
State Pension		129.20	Weekly cost of the home		700.00
50% Private Pension	+	82.00	your contribution	-	187.70
tariff income from capital	+	12.00	<b>Local Council contribution</b>	=	<b>512.30</b>
<b>Total weekly income</b>	=	<b>223.20</b>			
Personal Expenses Allowance	-	28.75			
savings disregard	-	6.75			
<b>Your contribution</b>	=	<b>187.70</b>			

Your weekly contribution towards the cost of the care home is £187.70. The local council will pay the remainder of the charge, £512.30 per week.

The council’s payment of £512.30 is greater than the Free Personal and Nursing Care figure of £261 so it includes the Free Personal and Nursing Care payments. Remember to tell the council when your savings reduce to the next £250 ‘band’, as this will reduce your tariff income and in turn reduce the payment you have to make.





# Care Home Contracts

When the council is making arrangements for you to enter a care home, you should be able to choose the home you want to live in, subject to it being suitable for your needs, affordable and having a place available for you.

The council should tell you what arrangements it will make, give you information about care homes in your area and give advice about what you need to do if you want to live in another area.

If the council is arranging your care home place, you should be given a full explanation of what is being arranged and what is included in the fee paid to the home. The contract should cover all essential care but may not cover such things as clothing or hairdressing which may be considered as extras. The council may expect you to use your Personal Expenses Allowance of £28.75 for these additional costs.





## Arranging and paying for your care yourself

You have the option of finding a place in a care home yourself, making your own arrangements and paying the fees. As with any other contract, you should read the care home contract carefully and make sure you understand it. The contract should include information about what the care home will provide, what the costs will be, what your rights are and how you can complain if something goes wrong.

You should get independent financial advice about how best to manage and use your savings to pay for your care.

You also need to consider what will happen to your contract with the care home if your savings reduce to £28,500 and whether you would be able to afford to stay there, as the standard rate that the council will pay may be much less than you have agreed in a private contract. Ask the care home what will happen in this situation, and get any agreement in writing.

If you are paying all of your care home fees yourself, you can continue to receive Attendance Allowance, Disability Living Allowance or Personal Independence Payment as normal, but only if you do not get Free Personal Care payments.

If you are paying your own care home fees but later need financial assistance, you should let the council know as soon as possible. If you have not previously been assessed as needing care in a care home, they will have to carry out an assessment of your needs and a financial assessment before they can decide whether you are entitled to help with the costs.

For a copy of the Scottish Government's **Care Home Contracts Guide** contact the [Age Scotland helpline](#) on **0800 12 44 222**.



## Types of care home contract

Current guidance from the Scottish Government says that councils should offer you choices about how the contract is arranged with the care home. There are three contract routes:

### Route 1 – Self Determined

This applies if you are arranging and paying for your own care, possibly without a care assessment, or if the social work department has assessed you as not needing a place in a care home.

### Route 2 – Mutual

This applies if the council has agreed that you need care in a care home setting, and that you are eligible for Free Personal and Nursing Care payments, but you pay the other care costs yourself.

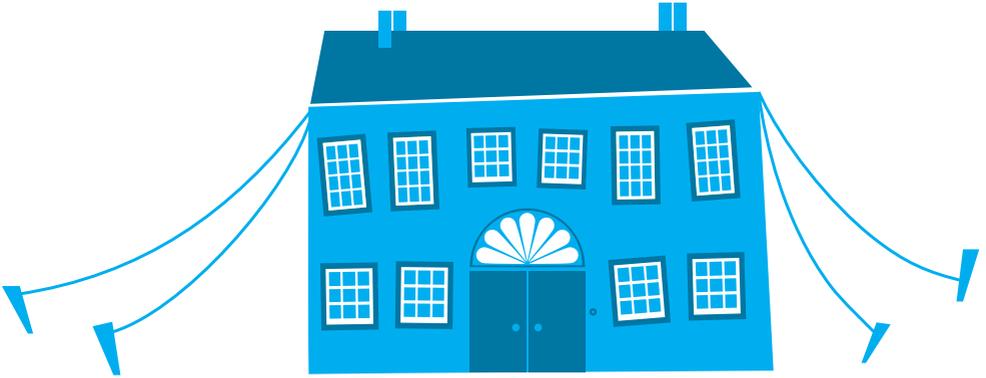
The council enters into a contract to pay the Free Personal and Nursing Care payments directly to the care home, and you make your own private contract for the costs of living and other services with the care home.

### Route 3 – Integrated

This is available in a few areas of Scotland and applies if:

- the council has agreed that you need care in a care home setting; and
- you are eligible for Free Personal and Nursing Care payments; and
- you want the council to make all the arrangements with the care home on your behalf.

The local council would have the contract with the care home and you would have a contract to pay any costs you are liable for to the council.



**The council's care assessment  
should make it clear whether  
your stay is regarded as  
temporary or permanent.**



# Temporary care home residents

Some people will move into a care home on a temporary basis. This could be for respite care, care after a hospital stay until they get well enough to return home, because they are waiting for more suitable housing or for a trial period.

The council's care assessment should make it clear whether your stay is regarded as temporary or permanent. Your stay can be classed as temporary for up to 52 weeks, or longer in exceptional circumstances.

If the council agrees to arrange a temporary stay for you, it can ask you to contribute towards the cost in one of two ways. It can apply its normal financial assessment to you straight away, or it can ask you to pay a reasonable amount for the first 8 weeks.

After 8 weeks the council must use its normal financial assessment.

If you receive regular respite care - for example respite care for one week in every six weeks - your council must decide whether to apply the financial assessment or to charge you a reasonable amount for your series of respite care weeks.



If the council applies its normal financial assessment to you for respite care then it must:

- ignore the value of your home if you intend to return to live there or if you are taking steps to sell your home so you can buy somewhere more suitable
- help you financially if your savings are £28,500 or less and you do not have enough income to pay the for the home
- ignore some of your income so you can continue to pay bills at home, such as fuel costs and insurance premiums
- ignore any help with housing costs you receive as part of your Pension Credit, such as money to help with service charges or a Support for Mortgage Interest loan
- ignore any Housing Benefit you receive
- ignore any Attendance Allowance, Disability Living Allowance care component or Personal Independence Payment daily living component you receive. If you are receiving financial support from the council towards the cost of your temporary stay, all three will stop after 28 days but they can restart once you return home. Get advice about your benefits and tell the Department for Work and Pensions if you are regularly moving in and out of a care home or hospital.

## **A temporary stay becomes permanent**

Where a temporary place in a care home has been arranged but your stay then becomes permanent, the financial assessment for a permanent place will apply from the date your stay officially becomes permanent.

If a stay which was intended to be permanent turns out to be temporary the council should assess you as a temporary resident as soon as this becomes clear. This may happen if, for example, you return to your own home, move in with friends or family, or enter sheltered housing.



# Couples

This section deals with issues that may affect spouses, civil partners and people who live together as though they are a married couple or civil partners.

## When one of a couple moves into a care home

When one member of a couple goes into a care home permanently, it can be a difficult and emotional time and one when the household financial situation is likely to change significantly.

### Council assessment of income and savings

When assessing a care home resident's income and savings the council will include assets held in the resident's sole name, and a share of any assets held in joint names, such as those held jointly with a spouse, civil partner or partner. The council cannot include savings or income belonging solely to the resident's partner and should not use assessment forms that ask for details of both partners' finances.

### Jointly-owned savings

Where an asset other than property is jointly owned, the council treats each of the owners as having an equal share until the resident has received their actual share of the asset. Where a couple have joint savings and one person moves into a care home it may be useful to divide any joint savings equally in half before any care home fees are incurred.

For example: if a couple have £60,000 and put £30,000 into a sole account each, the care home resident would only need to use £1,500 before reaching the £28,500 upper capital limit.



If they keep the £60,000 in a joint account, they will need to use £3,000 before the balance is £57,000 and the care home resident's half share is £28,500.

Therefore, splitting the savings into two accounts at the time of assessment saves the couple from using more of their savings than necessary on care home fees.

## Help for the partner not living in the care home

If your income has reduced because your partner, spouse or civil partner has moved to live permanently in a care home, you should have a benefit check to see if you are entitled to benefits such as Pension Credit, Housing Benefit or help with Council Tax. Call the Age Scotland helpline to find out if you are entitled to any benefits and see Age Scotland's **Benefits Maze** guide for more information.

## 50 percent disregard of private and occupational pensions

Where one member of a married couple or civil partnership moves into a care home, 50 percent of that person's occupational pension, personal pension or payment from a retirement annuity contract (or a total of these) can be passed back to the person remaining at home. This 50 percent is then ignored in the means test when calculating how much the resident has to pay.

The disregard only applies where:

- the resident actually passes half of their occupational or private pension or retirement annuity income to their spouse or civil partner, 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 section below on increasing the Personal Expenses Allowance)
- residents who pass less than 50 percent of the relevant income to their spouse or civil partner

If the care home resident dies, 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 stops.

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 to this effect) then this amount will be treated as already belonging to them. The resident can then pass 50 percent of the rest of the private pension to their spouse or civil partner, in addition to the amount covered by the legal arrangement.

The person eligible to receive the disregarded income does not have to accept it if it will leave them worse off, for example if it affects entitlement to means-tested benefits. If you are in this situation, get advice from a Citizens Advice Bureau or local Welfare Rights service before you make a decision.

## Increasing the Personal Expenses Allowance

Councils have the discretion to increase the Personal Expenses Allowance to more than the standard £28.75, to allow part of the resident's income to be made available to a partner at home. This can be particularly helpful for couples who are neither married nor civil partners, and so not covered by the 50 percent private pension disregard.

If you ask for the Personal Expenses Allowance to be increased the council does not have to agree, but if they refuse your request without properly considering it, you can challenge the decision using their complaints procedure.



## Council assessment where a couple both move into a care home

If a couple move into a care home, the council should assess them individually even if they are living in the same care home. Their financial assessments should take into account their individual savings and income (including their share of any jointly held assets). If they have less than £28,500 each they may qualify for financial assistance from the council.

## Means-tested benefits

A couple who both enter a care home on a permanent basis should each have a benefit check, and their benefit entitlement should be calculated individually.

If you both enter the same care home and you are assessed by the Department for Work and Pensions as a couple, you should seek advice from an advice agency such as a Citizens Advice Bureau to see whether you can appeal this decision.



# Deprivation of assets

In Scotland, you will be expected to pay the full cost of your care (apart from Free Personal and Nursing Care) if you have more than £28,500 (2020/2021) in capital.

Some people consider passing on their savings or other capital to their family members, friends or charities. However, giving away savings or property could affect your entitlement to financial help with your care home fees.

If the council believes that avoiding care home fees is the main or only reason you have used up or given away savings or other assets, they may decide it was **deliberate deprivation**.

When assessing your entitlement to help with with care home fees, the council can look for evidence of deliberate deprivation. This could include:

- a lump sum paid as a gift
- transferring a property to someone else
- selling a property for less than it is worth
- putting money into a trust that can't be revoked
- converting money into another form that has to be disregarded from the means test such as personal possessions or investment bonds with life insurance
- unusually high expenditure including extravagant holidays or luxury goods



Scottish Government guidance to councils says that the timing and motive for using or giving away capital or assets should be considered. For example, if you gave presents to your family at a time when you were fit and healthy, and were not anticipating needing care, this should be taken into account.

The Scottish Public Services Ombudsman website [www.spsso.org.uk](http://www.spsso.org.uk) has examples of deliberate deprivation decisions that have been challenged, and the outcomes. Speak to a solicitor if you would like legal advice about your own situation.

## Notional capital

If you are found to have deliberately deprived yourself of an asset, you will be treated as having notional capital. This means you will be assessed as though you still have the asset you have given away.

If notional capital has been included in your financial assessment, the council should apply **diminishing notional capital rule**. This means the amount of notional capital taken into account will reduce over time.



## Council powers of recovery

In some cases the council may have to pay towards your care fees even if it has assessed you as being able to pay the full cost of your care from your notional capital. The council has a duty to meet your assessed care needs if you are unable to arrange your own care and there is no one else willing and able to assist you. However, the council may seek to recover that money at a later date.

Where the council assesses that you have deliberately deprived yourself of an asset **in the six months before** you approached the council for funding, there is legislation that allows the council to recover sums paid towards your care costs from the person who received the asset.

If you gave away an asset **more than six months before** you applied for assistance, the council could still treat you as having deliberately deprived yourself of that asset. If this means they refuse to provide care home funding, you may need to use their complaints procedure to challenge the decision.

If the council decides that you have deprived yourself of capital but does provide funding for you, it may treat the funding it pays as a debt you owe, which it will recover later. In theory, the council could make use of Scottish bankruptcy law to pursue a debt of this kind; however, to date there are few examples of this happening.

If the council decide that you have deliberately deprived yourself of capital to avoid care charges, you can also use the council's complaints procedure to challenge this type of decision.



## Issues to consider before giving away an asset

Transferring an asset to another person could have significant consequences. Once it has been transferred out of your name you will no longer have control over it and the new owner may not act in accordance with your wishes. You should consider how you might be affected if disagreements arise in the future.

You should seek professional legal and financial advice before proceeding with any transfer. Age Scotland is not able to give this advice. The Law Society of Scotland may be able to give you contact details for solicitors who specialise in this area of law.

Tel: **0131 226 7411** / web: **[www.lawscot.org.uk](http://www.lawscot.org.uk)**

It is not possible to predict whether the council will raise the issue of deprivation of capital during any future means test. Councils will not usually give advice about how they might treat a possible scenario, and councils have varying approaches when considering whether deliberate deprivation has taken place.

## Transferring ownership of your home

If you are considering transferring ownership of your home, both you and the person you transfer the property to should get separate legal advice to discuss how you will deal with issues that arise, for example:

- Who will decide who lives in the property? If you need to move in the future, how would you manage this financially?
- What if the owner used the home as security for a debt?
- Are there Inheritance Tax or Capital Gains Tax implications?
- Could this affect entitlements to social security benefits?
- If the new owner marries, divorces, or experiences financial difficulties what will happen?
- Who would be responsible for the upkeep, repair and maintenance of the property?



# Acting on someone else's behalf

## Power of Attorney and Guardianship

There are different types of legal powers to deal with someone else's affairs in Scotland such as Welfare and Continuing Powers of Attorney, Guardianship Orders and Intervention Orders.

If you have the capacity to make your own decisions you could grant a **Power of Attorney**. However, if you no longer have the ability to decide who should manage your financial affairs someone may need to apply to the Sheriff Court to act as a **Guardian** or **Intervener**.

Managers of care homes can be granted the power to manage the finances of a resident if a doctor assesses that the resident cannot do this for themselves, and no other course of action is possible or appropriate.

The Age Scotland guides **Legal options for someone who has lost capacity** and **Guide to Power of Attorney in Scotland** provide information about these issues.



## Problems & complaints

If you have a problem with your care assessment, or your financial assessment, you can use the **3-stage social work complaints procedure**:

### Stage one – frontline resolution

You should make your complaint to the social work department, by telephone, email or letter, within six months of the time you become aware of the problem. They should respond within five working days. If you are not happy with their response you can ask them to move your complaint to stage two.

### Stage two – investigation

Your complaint should be acknowledged within three working days. The council should investigate your complaint and give you a full response within twenty working days, unless they let you know that they need more time to look into it. If you are still not happy with the council's response, you can ask the Scottish Public Services Ombudsman to look at the decision.



## Stage three – the Scottish Public Services Ombudsman

The Scottish Public Services Ombudsman (SPSO) can review decisions independently and make recommendations for actions that organisations are expected to carry out. These could include:

- asking the council to look at their decision again
- asking the council to change their decision
- recommending the council improve their services in a particular way
- recommending that the council apologises to you.

You have 12 months to complain to the **SPSO** from the time you become aware of the problem. You can contact the SPSO on **0800 377 7330** or see their website **www.spso.org.uk**.

## Other ways to complain

You may also wish to discuss your complaint with your local councillor or MSP. Your council will publish a list of councillors and the Scottish Parliament produces a list of MSPs. You can contact the **Scottish Parliament** on **0131 348 5000** or **0800 092 7500**.

If you are concerned about standards of care, speak with the care home staff or manager or, if the problem is more serious, with the Care Inspectorate. **The Care Inspectorate** has powers to inspect homes and see that necessary improvements are made. Visit their website **www.careinspectorate.com** or call them on **0345 600 9527**.

**Advocacy** can help you to represent your point of view as well as possible. This may involve friends or family speaking on your behalf or, in some areas, there may be an advocacy service.

Contact the **Scottish Independent Advocacy Alliance** on **0131 524 1975** to find an advocacy service near you.



## Useful Contacts

### Age Scotland helpline 0800 12 44 222

The Age Scotland helpline provides information, friendship and advice to older people, their relatives and carers.

If you need an interpreter call **0800 12 44 222** and simply state the language you need e.g. Polish or Urdu. Stay on the line for a few minutes and the Age Scotland helpline will do the rest.

You can call us on **0800 12 44 222** for a copy of our publications list or download copies of our publications from our website at **[www.agescotland.org.uk](http://www.agescotland.org.uk)**.

### The Care Inspectorate

The Care Inspectorate is responsible for inspecting care homes, and regulating and supporting the improvement of care and social work, across Scotland.

Tel: **0345 600 9527**  
**[www.careinspectorate.com](http://www.careinspectorate.com)**

### Carers Scotland

Carers Scotland is a charity set up to support people who care for an older relative, friend or a disabled family member. It is part of Carers UK.

Carers Line: **0808 808 7777**  
**[www.carersuk.org/scotland](http://www.carersuk.org/scotland)**



## Carers Trust Scotland

Carers Trust Scotland is the largest provider of comprehensive carers support services in Scotland.

Tel: **0300 123 2008**

**[www.carers.org/scotland](http://www.carers.org/scotland)**

## Elderly Accommodation Counsel

The Elderly Accommodation Counsel is a charity which maintains a nationwide database of all forms of accommodation for older people - retirement housing for sale and rent, care homes and hospices, along with guidance, advice and detailed information to help enquirers choose the accommodation most suited to their needs.

**[www.eac.org.uk](http://www.eac.org.uk)**

## Scottish Independent Advocacy Alliance

Scottish Independent Advocacy Alliance promotes, supports and defends the principles and practice of Independent Advocacy across Scotland. Contact them for details of local advocacy services.

Tel: **0131 524 1975**

**[www.siaa.org.uk](http://www.siaa.org.uk)**

## Disclaimer and copyright information

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