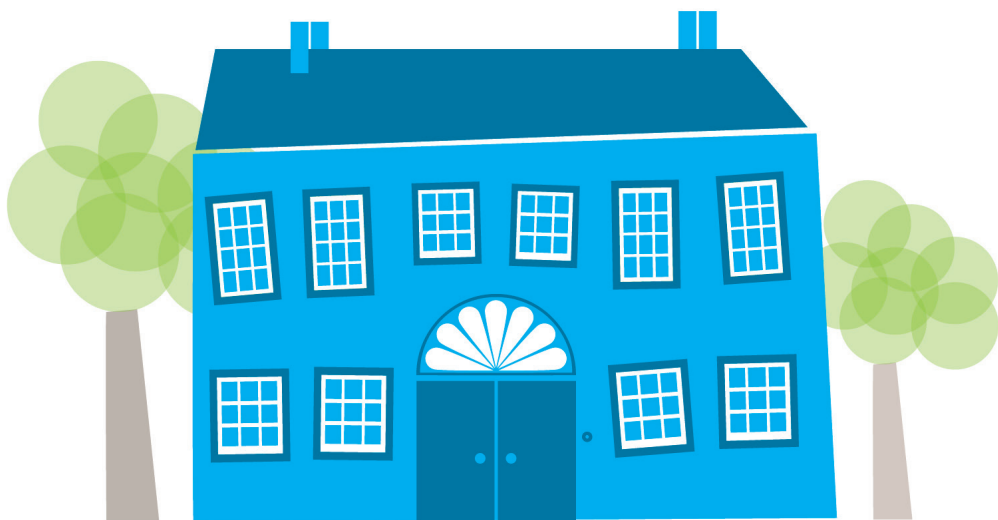


May 2019



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 or giving you the opportunity to arrange your care yourself, arranging and providing these 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 which 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 wives, husbands, civil partners or someone you live with as though you 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 from April 2019 to March 2020. There will be changes to rules and figures over time.



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 a place in a care home.

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

After the assessment, the council may consider that your needs will best be met by moving permanently to a care home. The council has a duty to make the arrangements for you unless they are satisfied that you want, and are able, to make your own arrangements, or have others who are willing and able to make arrangements for you.

There should be no undue 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 £17,500.

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

- carry out a care needs assessment for you
- look at whether you qualify for Free Personal and Nursing Care, then
- carry out a means-tested financial assessment to work out how much financial help you qualify for and how much you should pay towards the cost.

The financial assessment looks separately at the level of your capital and the level of your income. It applies if you move into a care home permanently, and it may apply if you are a temporary resident (see section 8 for information about temporary residents).



Free Personal and Nursing Care

People who are assessed as needing care in a care home can claim Free Personal and Nursing Care payments, which contribute towards the cost of their care.

Free Nursing Care is available for people of any age who have been assessed as needing nursing care services.

Free Personal Care is available for everyone in Scotland who has been assessed as needing it.

People can qualify for Free Personal Care, Free Nursing Care or both.

These payments are made to everyone who qualifies, regardless of income or capital.

From April 2019 the non means-tested amount the council can pay towards your care costs is:

- £177 per week for personal care
- £80 per week for nursing care, or
- £257 to cover both personal care and nursing care.

The council will only pay the rate for nursing care where 24-hour nursing care is available.

As well as Free Personal and Nursing Care you may also be entitled to means-tested help from the council.

Even if you have been assessed as needing care in a care home, councils only have to pay for your Personal and Nursing Care once there is a contract with the care home. So if you are arranging to move into a care home yourself, check with the council that they will be able to begin to make the Free Personal and Nursing Care payments to the care home from the date that you intend to move.



What the council can pay

If the council is paying a means tested amount towards the costs of your care, there are standard rates for people who are publicly funded (2019/2020 rates):

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

Councils are required to set rates for the care homes they own and manage at a rate to cover the actual cost of providing accommodation and care.

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:

From 8 April 2019 the capital thresholds are:

If you have **capital above £28,000** you will be assessed as being able to pay for your care yourself and will not receive means-tested help from the local council. You will receive the non means-tested Free Personal and Nursing Care if you qualify for it.

If your **capital is between £17,500 and £28,000**, you will be expected to make some contribution from your capital towards your care costs but you are likely to receive some means-tested help, depending on your income. The council will assess you as having tariff income of £1 per £250 or part of £250 you have over £17,500.

If your capital is below £17,500 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, the value of personal injury compensation which is in a trust or administered by a court, and personal possessions (as long as they were not bought deliberately with the intention of avoiding 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 so seek legal advice if you have money in 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 jointly hold capital with anyone, the council will usually expect it to be divided equally between the joint owners. If you have a joint bank or building society account, for example, with your husband or wife who is not moving into a care home, only half of the balance of the account will be included as your capital.

Where a couple have joint savings and one person moves into a care home it may be useful to split joint accounts into two equal separate accounts before any care home fees are incurred.

See the section below for information about treatment of the value of your home as capital because there are different rules for jointly held properties.

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 have access to if you asked for it, such as money in a trust which you are able to access, or capital which 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: the amount a willing buyer would pay for stocks and shares, or a house, or a surrender value for premium bonds.

If the value of your asset would be less because of costs involved in selling it, then 10% will be deducted from the total value to allow for expenses. The value of a property will be assessed at its market value, less any mortgage or loan secured on it, and less 10% of its value where there would be expenses involved in selling it. Once the property has been sold the resident will be treated as having their actual share of the sale proceeds after any mortgage, secured debts and sale costs have been paid.

If your capital is valued at more than £28,000 then a precise valuation will not be needed because you are expected to pay for your care costs yourself apart from any contribution from Free Personal and Nursing Care.

Treatment of the value of your home as capital

If you own your own home, the council will look at this as part of the financial assessment and will advise you about how the value of your home will be treated. It may be treated as capital, or may be disregarded for 12 weeks or for a longer period of time.

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 officially 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 this is not possible the council may end their contract with the care home and you may need to make your own contract, arranging directly with the care home how you will make your payments for your care.

Some people may want to make their own arrangements to pay their care home fees whilst their house is up for sale, as the council will claim back any unpaid fees once the property has been sold.

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 either:

- your partner (unless you are estranged or divorced from them), or
- a relative¹ who is aged 60 or over, or
- a younger relative who is ‘incapacitated’. The term ‘incapacitated’ is not defined but should apply to someone who receives benefits because of disability or ill health (or who would meet the medical conditions for a benefit but does not actually receive it), or
- a former partner who is divorced or estranged from you, but who is a lone parent with a dependent child, or
- 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.

When the property is disregarded because the care home resident’s partner lives there, but they then wish to move, Scottish Government guidance says that to enable them to buy a more suitable property the care home resident’s share of the property’s sale proceeds should be disregarded to allow the move to go ahead. The guidance does not specify how any capital remaining after the purchase of the new property should be treated and local councils have adopted differing approaches to this.

Unmarried partners, or other relatives, should ask to be treated in the same way but the council has discretion about whether to agree.

¹Relative 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 once the property is sold.

Councils must have a discretionary scheme in place to consider applications for deferred payments 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 on the property, or equity release, or if the amount of the deferred payment will be very high.

You will only be entitled to 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 £17,500
- 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 enables the council to claim back what they are owed when the property is sold and should give a reasonable estimate of the eventual total of the deferred costs.

You should seek independent legal and financial advice if you are thinking of entering a deferred payment agreement. You may need to think about the state of the local property market, options for investing the proceeds if the property is sold, insurance liabilities if the property is empty, legal responsibilities if you are thinking of becoming a landlord, maintenance costs and the impact on any means tested benefits you claim.

If the council agrees to a deferred payment agreement, they should ensure that you understand what you are committing yourself to before giving you the formal written agreement. You may be charged for the council's costs of land registry searches and other legal expenses. The agreement will last until the date you terminate it, for example if you sell the property, or until 56 days after your death. During the period of the agreement no interest can be charged but, if it remains unsold for longer than 56 days after your death, interest may start to accrue upon the debt. The council should keep you informed of the deferred amount on a reasonably regular basis.

If your request for a deferred payment is refused you may follow the council's complaints procedure.

If you have a deferred payment agreement, your **current** contribution to your care home fees can be calculated without taking account of the value of your property, and the **balance you owe** will be repaid once the property is sold. You should check carefully that the contribution the council will make and the payment you make are sufficient to pay the 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 £257 (2019/2020 rate).

He therefore needs to find £443 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 £27.75 (2019/20 rate), so he needs to contribute £172.25 per week.

The deferred amount is therefore the weekly fees of £700, less his contribution of £172.25, and less a Free Personal and Nursing Care payment of £257. The deferred amount is £270.75 per week and this will be recovered by the council after the eventual sale of the property.

Council legal charge - debt collection measures

Councils cannot force someone to sell their property without a court order. However, if someone owns a property which cannot be disregarded, and does not pay their contribution to care costs, the council can create a **charging order** against the value of the 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 you to advise you that a charge is being created. 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 whilst you do not pay the fees you are liable to pay, but when they assess that your capital should have reduced to below £28,000 you should no longer be assessed as having to pay in full.

If the council wants the property to be sold, it has to apply to court and the court will decide whether it is fair to order a sale of the property at that time, taking into account all the circumstances. The council can delay seeking to sell the property until the care home resident dies or possibly until anyone else living in the house dies.

Valuation of jointly owned property

Where a care home resident is joint owner of a property, the council must value the resident's actual financial share of the property rather than the property itself. The value of that share will depend on whether anyone, such as other joint owners, would be willing to purchase it from the resident, particularly if the other joint owners are living there. If not, it is highly unlikely that any other buyer on the open market would be willing to buy into the property. If no one is prepared or able to buy the share, the value of the interest could be very low or even nil. In some cases, councils have asked joint owners to sell jointly owned property or to buy out the care home resident's share. You should get legal advice from a solicitor if the council asks you to do this.

Councils are advised to get a professional valuation if they are unsure of the resident's share or the resident disputes the valuation.

If someone else has been paying bills and contributing to the running costs of a home, they may be able to show they have a beneficial interest in the property, even if it is legally owned by someone else. You will need to consult a solicitor if you are in this situation as it is a complex legal area. If a beneficial ownership is established then the property will be valued as if it is jointly owned.

Renting out property

Some people who move permanently into care homes choose to rent out their property, and use the rental income together with their existing income to pay towards the fees of the home. 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.gov.uk/renting-out-your-property-scotland/landlord-responsibilities 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 which is disregarded

Some income will be disregarded in the means-test calculation. The most common disregards include:

- Disability Living Allowance or Personal Independence Payment mobility components
- War Widow's Special Payments - the special war widow's pension of £96.31 per week introduced April 1990 for 'pre 1973 war widows' (in addition to the £10 partial disregard for war widows described below)
- Christmas bonus
- Income from savings - if you have interest paid on your savings, this is added to the balance of your savings and counts as part of your capital
- Certain charitable and voluntary payments intended to be used to pay for a specific item not covered by the care home's fees – maybe to enable you to have your own telephone, or for a regular outing not covered by the council's contract
- any payments of Child Tax Credit or Guardian's Allowance.

Income which is partly disregarded

Some kinds of income can be 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 which is paid to a spouse or civil partner not living in a care home.

Savings Disregard

If you are 65 or over, 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

SAVINGS	AMOUNT OF DISREGARD
Less than £144.38	Nil
£144.38 to £167.25	Your actual savings credit award or £6.50, whichever is less
Over £167.25 and you receive savings credit	£6.50
Over £201.55	£6.50

Couples

SAVINGS	AMOUNT OF DISREGARD
Less than £229.67	Nil
£229.67 to £255.25	Your actual savings credit award or £9.70, whichever is less
Over £255.25 and you receive savings credit	£9.70
Over £293.51	£9.70

Social security benefits

Whether you are single or one of a couple, the council will expect you to claim all the social security benefits you are entitled to when you move to live permanently in 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)

Some people who move into a care home will be receiving Attendance Allowance, a care component of Disability Living Allowance or a daily living component of Personal Independence Payment. If someone claims Free Personal Care then these benefits will stop after 28 days in a care home. These benefits are not affected if they only get help with Free Nursing Care or have completely arranged their care home placement themselves and are not receiving any funding at all from the council.

Payments from other people

If you choose a more expensive care home than the council would normally provide for someone with your needs, a friend or a family member may pay the difference between what the council would normally pay, and the care home's fees. These payments are called top up contributions.

Your contribution would be calculated using the charging rules and the council pays the amount left once your contribution and the top up payment have been deducted from the cost of the home.

Financial assessment: calculations

Once the council has full details of your income and savings, it 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 £27.75, your personal expenses allowance.

The council should give you full details of your care costs calculation 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, and this should be clear on the financial assessment.

The following examples are given to help you see how finances are worked out. Financial information in them may change over time.

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 and 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 £40.05 giving you a total of £169.25 per week.

What is ignored: Your capital, because it is less than £17,500.

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	+	40.05	your contribution	-	141.50
Total weekly income	=	169.25	Local Council contribution	=	558.50
Personal Expenses Allowance	-	27.75			
Your contribution	=	141.50			

Because of the rules about Free Personal and Nursing Care in Scotland, the council’s contribution to care home fees should be at least £177 if you have been assessed as needing personal care, and at least £257 if you have been assessed as also needing nursing care. In the example above, the council contribution is £558.50 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. Therefore your total capital will be assessed as £21,000 so you will have a **tariff income** of £14 per week (£1 per £250 or part of £250 you have over £17,500).

Your State Pension (£129.20), the other half of your private pension (£82) and your tariff income (£14) are included as income.

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

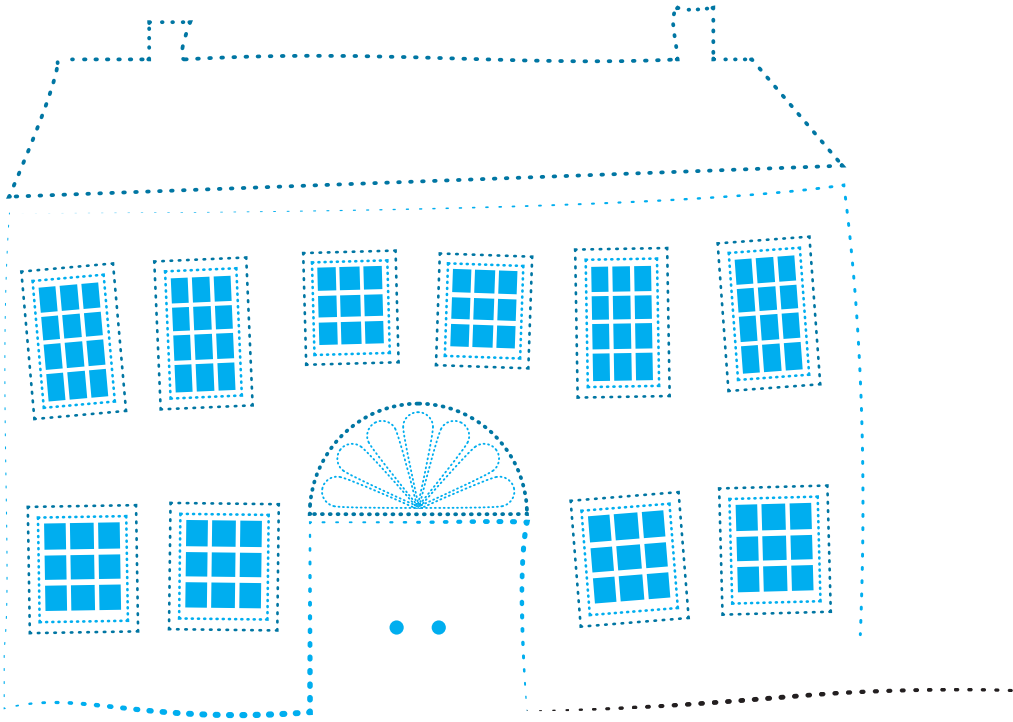
However, as your income is higher than the limit for receiving Savings Pension Credit, the council must disregard £6.50 per week of your income in addition to allowing you to retain a Personal Expenses Allowance of £27.75.

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	-	190.95
tariff income from capital	+	14.00	Local Council contribution	=	509.05
Total weekly income	=	225.20			
Personal Expenses Allowance	-	27.75			
savings disregard	-	6.50			
Your contribution	=	190.95			

Your weekly contribution towards the cost of the care home is £190.95. The local council will pay the remainder of the charge, £509.05 per week.

The council’s payment of £507.05 is greater than the Free Personal and Nursing Care figure of £257 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 have the right to choose the home, with certain restrictions.

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 £27.75 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; it should include information about what the care home will provide, what the costs will be, what your rights are and how you could complain.

You should get independent financial advice about how best to manage and use your savings to pay for your care, and about your financial position if your savings reduce to £28,000.

You also need to consider what will happen to your contract with the care home if your savings reduce to £28,000 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.

People paying full fees for themselves can receive Attendance Allowance, Disability Living Allowance or Personal Independence Payment as normal, but only if they do not get Free Personal Care payments.

If you are paying your own care home fees but later need financial assistance, you should ask the council to assess you to confirm that you need a place in a care home and to carry out a financial assessment.



Types of care home contract

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

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.

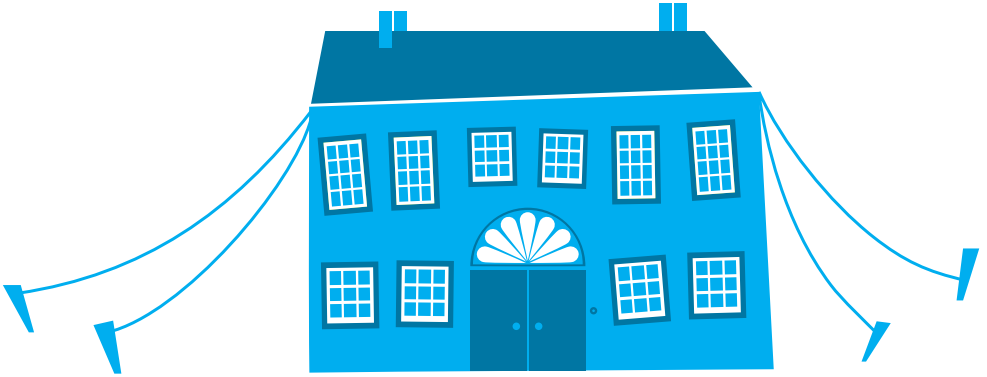
The council enters into a contract to pay the Free Personal and Nursing Care payments directly to the care home, and you make your own private contract for the costs of living and other services with the care home.

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, while 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 £28,000 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 which you usually 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 had been arranged but your stay then becomes officially permanent, the financial assessment for a permanent place will apply from the date your stay becomes officially 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 which may affect couples: wives, husbands, civil partners or someone you live with as though you 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 husband, wife, civil partner or partner. The council cannot include savings or income belonging solely to the resident's partner and councils cannot 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, but you should get advice about this as you may need to explain to the council why you divided the assets as you did.

For example: if a couple have £60,000 in a joint account, the care home resident would be assessed as having £30,000 which is just £2,000 above the upper capital limit of £28,000. If the £60,000 was not divided from the beginning, £4,000 would have to be spent



from the joint account before the overall total fell to £56,000 and the resident's apparent share to £28,000. Therefore dividing the joint account at the time of the assessment saves the couple from spending more capital than necessary.

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 couple who are married or have a civil partnership enters 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 if all are in payment) 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 back; 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 increase of the Personal Expenses Allowance below
- residents who pass an amount of 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 remainder of the private pension to their spouse or civil partner in addition to the amount covered by the existing arrangement.

The person eligible to receive the disregarded income does not have to accept it if it may leave them worse off, as it can affect 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 of £27.75 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 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 use their complaints procedure to have the decision reviewed.



Council assessment where a couple both move into a care home

If a couple move into a care home, the council will assess them as two individuals even if they are living in the same care home. They should be means-tested separately based on individual savings and income including their share of any jointly held assets. If they have less than £28,000 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 their benefit entitlement checked to ensure they receive all their entitlements.

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 your council or a Citizens Advice Bureau to see whether you have grounds to appeal the benefit decision, and check how your contributions towards your care costs should be worked out.



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 £28,000 (2019/20) in capital.

Many people consider passing on their savings or other capital to children or others. However giving away savings or property could affect entitlement to assistance with care fees depending on the reasons behind the transfer.

Deliberate deprivation is the term used when someone is assessed as having given away assets, either income or capital, to avoid using that money to pay for their care or future care. Scottish Government guidance to councils suggests that the timing and motive behind the transfer should be taken into account when this is being looked into.

When assessing eligibility for assistance with care home fees, the council can look for evidence of deliberate deprivation. Where they believe deliberate deprivation has taken place, the council can include **notional capital** equal to the amount given away in their financial assessment.

The Scottish Government Charging for Residential Accommodation Guide (CRAG) found at the [Scottish Care](http://www.scottishcare.org) website www.scottishcare.org gives the following examples of deprivation:

- a lump sum payment such as a gift or to pay off a debt
- transferring the title deeds of a property to someone else
- putting money into a trust that cannot be revoked
- converting money into another form that has to be disregarded from the means test, e.g. personal possessions, investment bonds with life insurance
- reducing capital through substantial expenditure on items such as expensive holidays or by extravagant living



Selling an asset for less than its true value may also be seen as deliberate deprivation.

Capital may have been given away for many reasons; the motivation may not have been to avoid care home fees, or this may only be part of the reason. The council must show that it is the most significant reason for the transfer if they are alleging that there has been deliberate deprivation. Timing may also be important in establishing what the reasons are behind the transfer. For example, if someone gave presents to their family at a time when they were fit and healthy and not anticipating needing care, this should be explained to the council.

Court cases have offered differing interpretations of what evidence the council needs, to demonstrate that deliberate deprivation has occurred. For further advice on how the courts have interpreted the guidance and law, you may wish to speak to a solicitor. You could also look at the examples on the website of the Scottish Public Services Ombudsman to see the range of decisions which have been made and challenged.

Tel: **0800 377 7330** / **www.spsso.org.uk**

Notional capital

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

If notional capital has been included in your financial assessment, then the council should apply diminishing notional capital rules. This means the amount of notional capital they take into account will gradually reduce.



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 **within the six months before** you approached the council for funding, there is particular legislation which allows the council to recover any sums which it has had to pay towards your care costs from the person who received the transferred 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 under the charging regulations. There is no set time limit beyond which the council has to ignore transfers of assets. In this situation, the council may refuse to fund you, and you may need to challenge their decision.

If the council assesses that you have deprived yourself of capital but then 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. To date there are few known examples of councils using this area of law to recover money owed to them but this could change in the future.

If you disagree with a decision by the council that you have deliberately deprived yourself of capital to avoid care charges, you can use the council's complaints procedure to challenge the 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**

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 in advance on how they might treat a particular transfer at a later time, and councils have varying approaches when considering whether deliberate deprivation has taken place.

Transferring ownership of your home

If you are considering transferring the ownership of your home, both you and the person you transfer the property to should get separate legal advice to look at how you would address issues which may arise:

- 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 power to deal with someone else's affairs in Scotland: Welfare and Continuing Powers of Attorney, Guardianship Orders and Intervention Orders.

If someone has the capacity to make their own decisions they could grant a **Power of Attorney**. However, if they no longer have the ability to decide who should manage their financial affairs it may be necessary for someone to apply to the Sheriff Court to decide if they can 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.

Advocacy can help someone who lives in a care home to represent their point of view as well as possible. This might involve friends or family speaking on their behalf or, in some areas, there may be an advocacy scheme which can provide an advocate. Your local council or NHS Health Board should be able to tell you whether there is an advocacy scheme in your area.

You can also contact the **Scottish Independent Advocacy Alliance** on **0131 524 1975** to find an advocacy service near you.



Problems & complaints

If you have a problem with your care assessment, or your financial assessment, you should use the council's complaints procedure if you cannot sort it out with the staff involved. A local Citizens Advice Bureau or advocacy service may be able to help you appeal against a benefit or council decision.

If you disagree with a council decision, you can use the council's three stage complaints procedure to challenge it. The council will have a Complaints Officer who should be able to provide details of the procedure.

- The first stage is an informal discussion with the department which has made the decision
- If this does not resolve matters you can make a formal complaint in writing which the council must investigate and respond to within 28 days unless there is good reason for the council to take longer
- If you are still unhappy, then you can complain to an independent complaints review committee consisting of 3 members who should all be independent of the council



If you have followed all these steps and feel the council has not resolved your complaint, you can approach the **Scottish Public Services Ombudsman** to request a complaint form asking them to investigate your case.

Tel: **0800 377 7330**
www.spsso.org.uk

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 more serious, with the Care Inspectorate which has powers to inspect homes and see that necessary improvements are made.



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**.

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

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



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

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

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

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We are grateful to the Scottish Government and the Money Advice Service for part-funding this publication.



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Care 5 May 2019