

Factsheet 39

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

April 2019

About this factsheet

This factsheet explains how being part of a couple affects your eligibility for local authority funding if you need to move into a care home. It also looks at how your entitlement to Pension Credit may be affected.

The information in this factsheet focuses on the rules for local authority funding, so is less relevant if you are making private, self-funded care home arrangements.

This is one part of the residential care means test system, so this factsheet should be read with factsheet 10, *Paying for permanent residential care*.

The information in this factsheet is correct for the period April 2019 – March 2020. Benefit rates are reviewed annually and take effect in April but rules and figures can sometimes change during the year.

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

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

Contents

| | | |
|-----------|---|-----------|
| 1 | Recent developments | 3 |
| 2 | Sources and terms used in this factsheet | 3 |
| 3 | The local authority financial assessment | 4 |
| 3.1 | Your personal budget | 4 |
| 3.2 | Only your own assets should be taken into account | 5 |
| 3.3 | Valuation of jointly owned capital | 5 |
| 3.4 | Pension credit rules | 6 |
| 4 | Where a couple both go into a care home | 7 |
| 5 | 50% private pension and annuity disregard | 8 |
| 6 | Short term and temporary care home residents | 9 |
| 7 | Varying the personal expenses allowance | 10 |
| 8 | If your partner wants to move later on | 10 |
| 9 | The information and advice duty | 11 |
| 10 | Complaints and rights | 12 |
| | Useful organisations | 14 |
| | Age UK | 15 |
| | Support our work | 15 |

1 Recent developments

Local Authority Circular (DHSC)(2019)1, published in January 2019, kept all the rates and financial thresholds for charging for care and support at the same levels as the previous financial year.

2 Sources and terms used in this factsheet

Care Act 2014, regulations and statutory guidance

This factsheet is based on the *Care Act 2014 ('the Act')*, introduced in April 2015. There are also references to the *Care and Support (Charging and Assessment of Resources) Regulations 2014 ('the charging regulations')*, and the *Care and Support Statutory Guidance ('the statutory guidance')*. These must be followed by local authorities when they are involved in the provision of care and support services.

Care homes and nursing homes

This factsheet provides information about '*care homes*' and '*nursing homes*'. These are standard terms used by the Care Quality Commission, the industry standards regulator.

Nursing homes are care homes where a nurse must be present to provide or supervise medical-type care alongside basic personal care.

We use '*care home*' in this factsheet unless discussing something specifically to do with a nursing home.

Local authority used as a general term

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

Partner

A '*partner*' can be part of a married couple (spouse), someone in a civil partnership or someone living together as a married couple. The charging regulations use the same definition as Income Support Regulations.

Capital

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

3 The local authority financial assessment

If you are in a couple and one of you needs to go into a care home, it is important to be aware of how the local authority financial assessment rules work. This is also called the '*means test*'.

If you or your partner move into a care home with local authority assistance for funding, it is likely you will have to pay something towards the cost from your own capital and income.

You also need to find out whether you should make separate claims for benefits, if one of you permanently enters a care home.

To obtain financial support from a local authority for a care home place, they must first assess your care needs and agree that permanent residential care is the most effective way to meet your eligible needs.

This should be recorded in a care and support plan that is agreed with you or your partner as appropriate. They should also consider possible alternatives to residential care, for example care in your existing home or in an assisted living setting.

After this, they carry out a financial assessment, to see whether you must contribute towards paying for the place. For more information on assessment, eligibility and care and support planning, see factsheet 41, *How to get care and support*.

3.1 Your personal budget

Your care and support plan must include a personal budget if you are going to receive financial support from the local authority. This sets out the cost of meeting your needs, how much you have to contribute and how much the local authority is going to pay, usually on a weekly basis.

Your personal budget must be a realistic figure. The local authority has a legal duty to ensure your eligible needs are met once it has identified them. In this case, this relates to the provision of appropriate residential care accommodation.

Statutory guidance states a local authority must genuinely assess the actual cost of good quality local residential care, to ensure your personal budget figure is sufficient to offer at least one suitable option at that amount.

The local authority must take account of all of your circumstances, be flexible in its approach and be aware of the present availability of local care home provision. Your personal budget should reflect the cost of out-of-area care, if this is part of meeting your needs.

Statutory guidance states '*the local authority should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care*'. They have a duty to ensure adequate local supply of residential care accommodation and should be able to offer you a choice.

3.2 Only your own assets should be taken into account

Your local authority cannot include capital or income belonging to your partner in your financial assessment. This is because it does not have the power to assess couples according to joint resources - each person must be treated individually. However, if one of a couple receives benefits in respect of both members, the local authority can take an appropriate part of that income into account.

Local authorities should not generally use joint assessment forms that ask for details of both partners' finances. A local authority may ask for details of your partner's finances on a separate form to ensure they are left with sufficient resources to live on when you go into a care home.

3.3 Valuation of jointly owned capital

Savings and the financial assessment

If you have more than £23,250 in capital, you are required to pay the full cost of your residential care. This figure is known as the '*upper capital limit*'. You might be called a '*self-funder*'.

Capital takes a number of forms including savings or property. If you have £23,250 or less, you may qualify for some local authority financial assistance.

The charging regulations give a local authority the power to divide a jointly held capital asset equally, except where there is evidence that the person owns an unequal share, or that asset is property or land.

If you have jointly held savings at the time of your financial assessment, it is in your interests to divide capital into the proportions owned by each of you before the financial assessment takes place. The example below explains why.

Example

You enter a care home and have £50,000 in a joint account with your partner. You are assessed as having £25,000 (50 per cent), which is £1,750 above the upper capital limit.

However, £3,500 must be spent from the joint account before the overall total falls to £46,500 and your 50 per cent share falls to £23,250 (upper capital limit).

Opening separate bank accounts before moving into the care home saves you having to spend more money than is necessary before your assessed share falls below the upper capital limit. However, the position for jointly owned property is different, see below.

Property and the financial assessment

The value of your former main home is disregarded from the financial assessment for as long as your partner remains living in it, after you move into residential care.

Other property assets include buildings, for example a second home or land. If you jointly own other property, the value is assessed based on the sale value of your beneficial interest in it at the time of the financial assessment. Beneficial interest means your right to the sale value of the part you own, on the open market, to a willing buyer. There is legal and beneficial ownership in this context and most people have both.

The valuation must be the current market or surrender value of the property, whichever is higher, minus 10 per cent of the value if there are actual expenses involved in selling the property. This must be expenses connected with the actual sale and not simply the realisation of the asset.

For example the costs to withdraw funds from a bank account are not expenses of sale, but legal fees to sell a property are. Also deduct any outstanding debts secured on the property, for example a mortgage.

Note

If you are a joint beneficial owner of property, meaning you have the right to receive some of the proceeds of its sale, it is your actual beneficial interest in the property that should be taken into account in the financial assessment, not the property as a whole.

Statutory guidance requires any dispute about valuation to be promptly resolved, possibly by arranging an independent valuation.

For more information on care home funding and property see factsheet 38, *Property and paying for residential care*.

3.4 Pension credit rules

If you receive Pension Credit (PC) as a couple, your entitlement changes if one of you permanently enters residential care. The Pension Service treat you as two separate individuals and eligibility for PC depends on your individual levels of income and capital.

Note

Your qualifying age for PC is the same as your state pension age. The state pension age for men and women equalised in November 2018 and is gradually increasing. In April 2019, it is 65 and 2-3 months and will be 65 and 8-9 months by April 2020.

4 Where a couple both go into a care home

The local authority financial assessment

The local authority must assess you and your partner as individuals, regardless of whether you go into the same care home together. You should be financially assessed separately, based on your own capital and income, including your share of any jointly held capital assets.

Pension Credit rules

In most cases, if you both enter the same care home permanently, you are treated as two separate individuals in separate households, even if you share a room. However, the Pension Service must look at your particular circumstances to decide whether to treat you as individuals in separate households or a couple in the same household.

Pension Service guidance states that deciding whether you are members of the same household is a question of fact and degree.

Examples of the issues to consider include:

- structure of days – can you decide when to get up, have meals, go to bed, etc?
- how the accommodation is arranged - do you decide which room is the dining room, the living room, etc?
- can you decide who can come and stay, and for how long?
- can you insist other people cannot enter your accommodation without permission?
- can you decide the decor and furnishing of your accommodation?
- do you have facilities for preparing food and making tea and coffee, etc?
- do you have responsibility for running the household - are you responsible for repairs, replacing domestic appliances or buying food?

If you are not treated as being in the same household, you need to make separate claims for Pension Credit. Seek advice if you are inappropriately treated as a couple in this situation.

If you go into different care homes or live in different sections of a care home, there should be no problem arguing you should be treated as two separate individuals.

Savings Credit disregard

If you are entitled to Pension Credit Savings Credit, the means test allows a small weekly income disregard when it is taken into account. If you are a member of a couple, this is a maximum of £8.60 and for a single person a maximum of £5.75. A Savings Disregard may apply if you are not in receipt of Pension Credit Savings Credit. For more information, see factsheet 48, *Pension Credit*.

5 50% private pension and annuity disregard

If you enter a care home permanently and have a personal or private pension, an occupational pension or a retirement annuity, you can choose to pass 50 per cent to your partner remaining at home. This amount must be excluded or disregarded from the local authority financial assessment.

If you have more than one of these types of income, they can be added together to reach a 50 per cent figure. Your partner may remain at your previously shared home or can live anywhere other than the same care home as you. The disregard does not apply to:

- partners who are neither married nor civil partners (see section 7 about the discretion to increase the Personal Expenses Allowance)
- residents who pass an amount less than 50 per cent of their relevant income to their spouse or civil partner.

Note, if your partner receives Pension Credit (PC) and you pass on 50 per cent of a personal, private or occupational pension, or annuity to them, this is counted as income when calculating their PC entitlement. Seek advice if you are unsure whether passing on the pension makes sense financially.

If your partner is already legally entitled to part of your private pension (for example, because of a Court Order), this amount is treated as already belonging to them in the financial assessment. You can pass 50 per cent of the remainder of your private or occupational pension, or annuity, to your partner as described above.

If someone else manages your finances under a Lasting Power of Attorney, Enduring Power of Attorney or court-appointed deputyship, they can usually decide whether to pass income to your partner, including in situations where they are the person receiving the money.

An exception is if you (the Donor) imposed specific restrictions or conditions in a Power of Attorney preventing this. Every decision taken on your behalf must be in your '*best interests*' as defined by the *Mental Capacity Act 2005* and its Code of Practice. For more information, see factsheet 22, *Arranging for someone to make decisions on your behalf*.

6 Short term and temporary care home residents

Short term resident

If you enter a care home on a short-term basis of up to 8 weeks, a local authority can choose to assess and charge you based on the rules as if you still live at home as a couple. See factsheet 46, *Paying for care and support at home* for more information on these rules.

Temporary resident

You are treated as a temporary resident in a care home if you are expected to return home within 52 weeks. In this case, you are treated as if you are a permanent resident but the value of your home is disregarded and allowance is made for on-going housing costs.

When assessing how much you should contribute to care home fees, a local authority must carefully consider the needs of you and your partner.

If you receive Pension Credit (PC) as a couple and one of you enters a care home for a temporary stay, PC continues to be paid as if you are both still at home. The local authority should ignore the amount paid in respect of your partner remaining at home, although they need to look at your partner's income to ensure the financial assessment is carried out accurately.

Paragraph 3 of Annex F of the statutory guidance tells local authorities to ensure the partner at home receives an amount equal to the basic level of PC *'to which they may be entitled in their own right'* and any additional amounts they are entitled to.

Any additional amounts you may need so you can maintain your home during a temporary stay so it is in a fit condition for you to return to must be disregarded. Such expenses include, but are not limited to, ground rent, service charges, water rates or insurance premiums. If Housing Benefit is being paid, this should be disregarded.

If Attendance Allowance or Disability Living Allowance is being received, these should be completely disregarded. A local authority should note eligibility for both these benefits ceases after 4 weeks of local authority support and they should make sure they consider the impact on your ability to maintain your home.

If the local authority allows a single person rate for the partner at home when apportioning PC, they may expect household expenses to be shared equally and only allow half of the expenses. This allowance may reduce further if other non-dependant adults live in the household who could be expected to contribute to the household expenses.

For more information, see factsheet 58, *Paying for short term and temporary care in a care home*.

7 Varying the personal expenses allowance

The local authority has to allow you to keep a Personal Expenses Allowance (PEA) of at least £24.90 a week as part of the financial assessment if you enter a care home temporarily or permanently. It should not take all of your income into account if it assists with paying for your care home place.

Your PEA cannot be used to pay for basic care home fees. It is intended for your own personal use. A local authority can choose to increase the PEA if you ask them to. You need to provide reasons why this is necessary.

If your property is disregarded in the financial assessment, statutory guidance requires the local authority to:

consider whether the PEA is sufficient to enable [you] to meet any resultant costs. For example, allowances should be made for fixed payments (like mortgages, rent and Council Tax), building insurance, utility costs (gas, electricity and water, including basic heating during the winter) and reasonable property maintenance costs.

If the local authority agree to increase your PEA, this part of your assessed income can be made available to a partner at home. This can be helpful for couples who are not married or are civil partners and who cannot take advantage of the 50 per cent pension disregard.

This is a discretionary power so the local authority does not have to agree to increase your PEA. If it refuses your request without properly considering it, you can complain to challenge the decision.

8 If your partner wants to move later on

If your partner stays in your home once you move into a care home permanently, it is disregarded from your financial assessment for as long as they remain living there.

If your partner decides to move from home, once the original property is sold, this disregard ends and your share of the proceeds of sale can be taken into account in your financial assessment. Statutory guidance states that, where necessary, you should be able to give some, or all, of your share of the sale proceeds to your partner to allow them to buy a more suitable property. See the example overleaf.

If you spend your money and the local authority believes you have spent it or given it away to avoid paying care fees (*'deliberate deprivation'*), they can still take into account in calculating your assets.

If you have an attorney with the appropriate powers under Lasting or Enduring Power of Attorney, they may be able to request this disregard on your behalf if it is in your *'best interests'*. For more information, see factsheet 22, *Arranging for someone to make decisions on your behalf*.

Example from statutory guidance

Max moves into a care home and has a 50 per cent interest in a property that continues to be occupied by his civil partner, David. The value of the property is disregarded whilst David lives there, but he decides to move to a smaller property that he can better manage and sells their shared home to fund this.

When the property is sold, Max's 50 per cent share of the proceeds could be taken into account in the financial assessment. However, in order to ensure David can buy the smaller property, Max makes part of his share of the proceeds from the sale available to David. In such circumstance, it is not reasonable to treat Max as having deprived himself of capital to reduce his care home charges.

Unmarried partners or other relatives benefiting from a disregard can ask to be treated in the same way. Statutory guidance does not state how other capital left after the purchase of a new property should be treated and local authorities can adopt different approaches. For more information, see factsheet 38, *Property and paying for residential care*.

9 The information and advice duty

The local authority is required to provide you with information and advice relating to care and support, even if you do not qualify for funding support from them. The service must, at the very least, deliver information and advice on:

- the local care and support system and how it operates
- the choice of types of care and support and the choice of providers available in the authority's area
- how to access the care and support that is available
- how to access independent financial advice on matters relevant to the meeting of needs for care and support, and
- how to raise concerns about the safety or wellbeing of an adult who has needs for care and support.

The information and advice must be accessible and appropriate to the needs of the types of local people who may require it, for example disability access issues must be considered in line with legal requirements set out in the *Equality Act 2010*.

10 Complaints and rights

If you are not satisfied with any aspect of the service you receive from a local authority or a care home, you can make a complaint. This can be about the means test, the standard of information and advice, standards of communication, possible delays, and/or the skills and attitudes of the professionals you deal with.

Complain through the local authority complaints procedure or the internal procedure in the care home. If your complaint remains unresolved, ask the Local Government and Social Care Ombudsman (LGO) to investigate.

If you arrange and fund your own residential care, you have a right to complain to the LGO about your care home. You can contact the Care Quality Commission, the care home industry regulator, about concerns you have, although they do not investigate individual complaints.

For more information, see factsheet 59, *How to resolve problems and complain about social care*.

Human rights – Home and family life

Article 8 of the *Human Rights Act 1998* states:

Everyone has the right to respect for his private and family life, his home and his correspondence.

A high profile case involved Mr and Mrs Driscoll who had lived together for 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and said she used her husband as her eyes. They were separated after Mr Driscoll became unwell and moved into a residential care home. Mrs Driscoll wanted to move to the home with her husband but was told she did not meet the criteria used to by the local authority to allocate places.

Human rights and older people's organisations pointed out that the couple's right to respect for their home and family life had not been properly considered. A campaign by the family used human rights arguments to convince the local authority to reconsider its decision. Mrs Driscoll's needs were reassessed and she was offered a place in the same care home as her husband.

The Care Act takes human rights principles into account by requiring the local authority to consider your wellbeing when assessing your needs.

While this does not mean that a local authority cannot make decisions that affect your right to private and family life, it must ensure your rights are appropriately balanced against other considerations, such as the amount of money allocated for your care. It must always take a flexible approach, taking into account your individual circumstances.

Mental capacity

If you lose mental capacity, all those who need to make decisions on your behalf must act in your '*best interests*' as defined by the *Mental Capacity Act 2005* and its Code of Practice.

You may have set up a Lasting Power of Attorney (LPA) for property and financial decisions or for health and care decisions, or both types, whilst you had mental capacity.

An LPA needs to be registered with the Office of the Public Guardian to allow the attorney to make decisions for you within the powers granted to them and subject to any limitations set out in the LPA document. Your attorney could, for example, be your spouse, partner or civil partner.

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

Useful organisations

Care Quality Commission

www.cqc.org.uk

Telephone 03000 616 161 (free call)

Independent regulator of adult health and social care services in England.

Carers UK

www.carersuk.org

Telephone 0808 808 7777

Information and support for carers, including information about benefits.

Citizens Advice

www.citizensadvice.org.uk

Telephone 0344 411 1444

Free, confidential, independent advice, face to face or by telephone.

EAC FirstStop Advice

<http://hoop.eac.org.uk/>

Information on housing options for older people.

Equality Advisory Support Service

www.equalityadvisoryservice.com

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

Information and advice about the *Equality Act 2010* and human rights.

Pension Service (The)

www.gov.uk/contact-pension-service

Telephone 0345 60 60 265

State Pension Forecasting Team 0345 3000 168

Deal with Pension Credit claims

Local Government and Social Care Ombudsman

www.lgo.org.uk

Telephone 0300 061 0614

Provides free, independent, service for complaints about local authorities; also about social care service providers for self-funders.

Relatives & Residents Association (The)

www.relres.org

Telephone 020 7359 8136

Advice and support to older people in care homes, relatives and friends.

Age UK

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

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

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

In Wales contact

Age Cymru Advice

www.agecymru.org.uk

0800 022 3444

In Northern Ireland contact

Age NI

www.ageni.org

0808 808 7575

In Scotland contact

Age Scotland

www.agescotland.org.uk

0800 124 4222

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The evidence sources used to create this factsheet are available on request. Contact resources@ageuk.org.uk

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Every effort has been made to ensure that the information contained in this factsheet is correct. However, things do change, so it is always a good idea to seek expert advice on your personal situation.

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