

Factsheet 39

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

April 2018

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 looks at your rights to welfare benefits.

It focusses mainly on if you are seeking state support than if you are privately arranging and paying for your residential care.

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 2018 – March 2019. 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.

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1 Recent developments

This factsheet is based on the *Care Act 2014* and its supporting regulations and statutory guidance, introduced in April 2015.

Local Authority Circular (DHSC)(2018)1, published in January 2018, kept all the rates and financial thresholds for charging for care and support at the same levels as the previous financial year.

2 Explanation of terms used

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 to do with a nursing home.

Charging regulations and statutory guidance

There are references to the charging regulations and statutory guidance that support the *Care Act 2014* ('*the Act*') throughout this text. These set out how a local authority must administer adult social care. These include the *Care and Support (Charging and Assessment of Resources) Regulations 2014* ('*the charging regulations*'), and the *Care and Support Statutory Guidance 2014* ('*the statutory guidance*').

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. We use '*partner*' as a general term.

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 ('*means test*') work.

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/or income.

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

To obtain financial support from the local authority, they must assess your care needs, agree a requirement for permanent residential care and confirm you meet the eligibility criteria. They must document how they are going to meet your needs in an agreed care and support plan.

After this, they carry out a financial assessment, to see whether you must contribute towards funding the placement. 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 your 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 allow 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.

The 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.

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, but often relates to savings or property. If you have £23,250 or less, you may qualify for some local authority financial assistance.

Statutory guidance describes the local authority's power to divide a jointly held capital asset equally '*except where there is evidence that the person owns an unequal share.*' If you have jointly held savings at the time of your financial assessment, it can be in your interests to divide capital into the proportions owned by each of you before the financial assessment takes place.

Example

One member of a couple enters a care home and has £50,000 in a joint account. The resident is 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 the resident's 50 per cent share falls to £23,250 (upper capital limit).

Dividing the joint account at the outset saves the couple having to spend more capital than is necessary before the resident's assessed share falls below the upper capital limit. However, the position for jointly owned property is different, see below.

Property and the financial assessment

Jointly owned property is disregarded from the financial assessment for as long as your partner remains living in it after you have moved into residential care.

Other property assets include buildings, for example a second home or land. If you jointly own property, it must be 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.

Charging regulations state '*where the adult and one or more other persons are beneficially entitled in possession to any capital asset except an interest in land...each person is to be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest.*'

It states '*the adult's share of the whole beneficial interest [in property or land] will be the actual share (as determined by the local authority) and is to be treated as if it were actual capital.*' This confirms that property or land must be assessed in the amounts owned rather than divided 50:50.

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.

The 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

The government is increasing women's state pension age, which is the PC qualifying age for men and women. It is increasing to 65 by November 2018 and 67 by October 2028. In April 2018, it is 64 years and 6 months.

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 to consider in deciding whether there is a household 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 there is no household, there cannot be a common household and two separate '*benefit units*' with a single claimant each exists. 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 registered to provide both accommodation with personal care and accommodation with nursing and personal care, 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 income disregard when it is taken into account. If you are a member of a couple this is £8.60 and for a single person this is £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

You may have a significantly higher or lower income than your partner. These rules are designed to protect one partner from possible financial hardship as a result of the local authority financial assessment for residential care.

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 your 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 (but see the discretion to increase the Personal Expenses Allowance below)
- residents who pass an amount less than 50 per cent of their relevant income to their spouse or civil partner.

This disregard is in Schedule 1, section 16(1)(b), of the charging regulations. 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 rest 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 or an Enduring Power of Attorney, they can usually decide whether to pass income to your partner, including in situations where they are the person receiving the money.

One exception is if you (the Donor) imposed specific restrictions or conditions in the 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

If you enter a care home on a short-term basis of up to 8 weeks, your local authority can choose to assess and charge you based on the rules as if you were still living at home as a couple.

If you are a temporary resident in a care home, which means you expect to return home within 52 weeks, 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, your 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.

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.

In addition paragraph 5 of Annex C states:

Only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support. Where this person receives income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income. A local authority should also consider the implications for the cared-for person's partner.

If your 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. It should not take all your income if it assists with funding.

Your PEA must not 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 your property is disregarded in the financial assessment, the statutory guidance requires your local authority to:

consider whether the PEA is sufficient to enable the person 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 your local authority decides 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 are therefore not covered by 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 property 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 that property, once the original property is sold, the 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 use part of your share of the sale proceeds to enable your partner to buy a more suitable property.

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.

The last line relates to newly released funds that may otherwise have had to be included in the financial assessment. Unmarried partners or other relatives benefiting from a disregard can ask to be treated in the same way. The 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

Your local authority is required to provide you with information and advice relating to care and support under the Act. 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. You can complain through the local authority complaints procedure or the internal procedure in the care home.

If you arrange and fund your own residential care, you have a right to complain to the Local Government Ombudsman about your care home service. You can also contact the Care Quality Commission, the care home industry regulator, about concerns you have.

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 that:

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

The British Institute of Human Rights provides this ‘*real-life*’ case example to highlight the issue of couples being split up in breach of their human rights when they both need care home accommodation:

Mr and Mrs Driscoll 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.

Speaking to the media, Mrs Driscoll said “*We have never been separated in all our years and for it to happen now, when we need each other so much, is so upsetting. I am lost without him – we were a partnership*”.

Human rights and older people's organisations pointed out this was a breach of the couple's right to respect for their home and family life, as protected by the *Human Rights Act 1998*. 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.

This case relates to your local authority's duty to maximise your individual wellbeing, as defined in the Act. Factsheet 41, *How to get care and support*, has more information.

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 (England)

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

Department of Health and Social Care

www.gov.uk/government/organisations/department-of-health-and-social-care

Telephone 020 7210 4850

Government department with overall responsibility for social care.

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*.

Pension Service (The)

www.gov.uk/browse/working/state-pension

Telephone 0345 60 60 265

State Pension Forecasting Team 0345 3000 168

Details of state pensions, including forecasts and how to claim.

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 or Age Cymru 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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