



April 2008

Key Points:

- Replaces previous version dated April 2007
- Capital limits updated

Treatment of the former home as capital for people in care homes

This factsheet is aimed at people aged 60 and over.

The information in this factsheet covers the position for people who have moved to a care home on a permanent basis.

This factsheet describes the situation in England. Readers in Northern Ireland, Scotland and Wales should contact their respective national Age Concern office for information about the rules there. Contact details are:

The Scottish Helpline for Older People – Age Concern

Scotland, tel: 0845 125 9732 (local call rates) Monday to Friday, 10am – 4pm; website: www.olderpeoplescotland.co.uk;

Age Concern Cymru, Ty John Pathy, Units 13/14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ, tel: 029 2043 1555 (national call rate); website: www.accymru.org.uk;

Age Concern Northern Ireland can be contacted at: 3 Lower Crescent, Belfast BT7 1NR, tel: 028 9032 5055 (national call rate) Monday to Friday, 10am – 12pm and 2pm - 4pm, website: www.ageconcernni.org.

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1. Assessment of capital

Financial assistance with care home fees from the local authority social services department is usually means tested. Care home residents with capital over certain limits generally have to meet the full cost of accommodation and personal care in a care home. For the financial year 2008-2009, the upper capital limit in England is £22,250. Capital can be in a variety of forms including savings, investments or property. More detailed information on the charging rules in general can be found in Factsheet 10, *Local authority charging procedures for care homes*.

Some assistance towards the cost of a care home may also be available in the form of means-tested social security benefits such as Pension Credit or, for those aged less than 60, Income Support. Further information on Pension Credit can be found in Factsheet 48, *Pension Credit*. If you have a query relating to Income Support the local Citizens Advice Bureau or welfare rights organisation may be able to assist.

Before any financial assistance can be provided with the cost of a care home the local authority must first assess your care needs and agree that these meet its criteria for requiring the type of care concerned. Details about getting a care assessment are contained in Age Concern Factsheet 41, *Local authority assessments for community care services*.

2. The treatment of property in the local authority means test

2.1 Property which the local authority has to disregard

The value of your home is not included in the means test for any temporary stay in a care home. For permanent care, any interest in your former home will generally be taken into account as capital. There are exceptions to this rule, which are set out below.

The value of your former home will be disregarded (ignored) if it is occupied by:

- your partner (husband, wife, civil partner or someone you live with as though you are married or civil partners); **or**

- a relative who is aged 60 or over, or a younger relative who is 'incapacitated'. 'Relative' includes parent, parent-in-law, brother, sister, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter (or the spouse or partner of any of those previously mentioned), grandchild, grandparent, uncle, aunt, niece, nephew. The term incapacitated is not defined but should apply to someone receiving an incapacity benefit or disability benefit or who would fulfil the medical conditions to receive one of these benefits;
- a former partner who is divorced or estranged from you but who is a lone parent; **or**
- a child under 16 years who you are liable to maintain (local authority assessment only).

The local authority also has a discretionary power 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 has been caring for the resident for a substantial period; or a friend who is over 60. The authority does not have to exercise this power but should give individual consideration to any requests to do so.

2.2 Local authority disregard for first 12 weeks of permanent care

For all residents, the local authority must disregard your property for the first 12 weeks of being a permanent resident in a care home funded by the local authority. If your stay was initially temporary the 12 weeks runs from the date it is decided your care is permanent. If the property is sold within this 12 week period then the disregard ceases to have effect from the date of sale, and so the proceeds will be counted as capital.

The Department of Health has recently stated that the 12 week disregard includes self-funding residents who have been permanently in a care home for more than 12 weeks and who find that they need local authority assistance due to their financial situation. This was in a response to an Ombudsman's enquiry that was ultimately settled before a decision was issued. It relates a definition of 'resident' (for the purposes of the Assessment of Resources Regulations) as only commencing at the point when an individual is assisted with funding by a local authority under Part III of the National Assistance Act.¹

¹ Age Concern was alerted to this development by the author of the Disability Rights Handbook, which is published by the Disability Alliance.

It is the understanding of Age Concern that this is a departure from the previous guidance in Local Authority Circular (2001) 10, which stated that the 12 week property disregard rule was provided to offer time for a resident to decide how best to fund the move following their permanent entry into a care home. The position was therefore that if you had been self-funding your own care for more than 12 weeks and then approached the local authority for help whilst your property was up for sale, you would not be entitled to the property disregard.

At the time of writing (March 2008), the Department of Health has not issued guidance to local authorities regarding its response to the Ombudsman's enquiry. As a result, the approach of local authorities to self-funding residents who are in-situ and then find they need local authority financial assistance may not have changed. However, if a local authority does not offer the disregard on the grounds that you have been a permanent and self-funding resident for too long, you should query this decision in light of the recent Department of Health's Ombudsman enquiry response.

If the local authority knows that you own your own home but doesn't tell you about the available disregards, you should complain (see Section 7). The authority could be liable to reimburse you if it fails to allow you a mandatory disregard and you incur unnecessary expenditure as a consequence.

2.3 Pension Credit disregard while disposing of a property

For Pension Credit, the value of your home is ignored for periods of temporary care. If your care is permanent, the value of your property can be ignored for up to 26 weeks (or longer if reasonable) as long as steps are being taken to dispose of it.

You can still receive Pension Credit during this period if you qualify based on your income and capital other than your former home.

If you are in permanent care but your house is not up for sale, because of a disregard or a deferred payment agreement, the value of your interest in your former home will generally be included in the means test for Pension Credit. A former home still inhabited by a partner or relative is disregarded under similar rules to those used by the local authority, but there is no discretionary disregard.

As there is no upper capital limit for Pension Credit, a resident with a low income and a low value property might in some circumstances be able to claim Pension Credit whilst the property is being taken into account in the assessment.

2.4 Local authority deferred payment agreements

If your property is taken into account in the means test you may be able to enter into a 'deferred payment agreement' under which the local authority agrees to provide funding on a loan basis, to be repaid when the property is sold at a later date. This enables residents who do not wish to sell their former home immediately, or who are unable to sell it quickly enough to pay for their care, to get help with their fees.

Authorities have a discretion whether to offer deferred payments in individual cases but must consider each application on its merits. They should not operate blanket policies to refuse applications from certain groups without giving them due consideration.

Authorities have been told to make residents (and potential residents) aware of deferred payments, and to explain which residents they are most likely to help. The local authority should advise you to seek independent financial advice if you want to enter into a deferred payment agreement.

If, having ensured that you understand what you are committing yourself to, the authority agrees the deferred payment agreement, you will receive the agreement in writing. You may be charged for the costs of land registry searches and other such legal expenses. The agreement will last until the date you terminate it (for instance because you have sold your property), or until 56 days after your death.

If your request is refused, or you think the local authority has placed excessive limits on who can use the agreements, you should complain. See Section 6 for details of how to complain. The reason for refusal should be put in writing and you should receive a copy. Local authorities should not refuse to enter into a deferred payment agreement merely because you have other capital which is below the upper capital limit.

When you enter into a deferred payment agreement, the local authority will calculate how much you can afford to contribute towards the cost of your care from your income and other capital. The local authority pays the difference between your contribution and the contract price that it has agreed with the home for your care, to be repaid when the property is sold.

With your agreement, the local authority places a legal charge on your property to secure the deferred amount, which accrues to be repaid at a later date. If the amount owed reaches such a level that, if it were repaid, your remaining capital would be below the upper capital limit, the debt will accrue from then more slowly at the 'tariff income' rate (£1 per week for every £250 of capital above the lower capital limit) until your capital falls to the lower limit. Tariff income is explained in Age Concern Factsheet 10, *Local authority charging procedures for care homes*.

Local authorities have been reminded that these arrangements should not disrupt existing good practice which councils have developed to support residents who may have very short term difficulties in selling their homes. In such cases placing a legal charge 'might be disproportionate'.

Local authorities have been advised to make people aware of their entitlement to social security benefits such as Pension Credit and Attendance Allowance (AA) or Income Support and Disability Living Allowance (DLA) care component for younger claimants. Residents who qualify for AA/DLA (care component) and Pension Credit and are receiving interim funding whilst their property is up for sale can receive both benefits provided that the local authority will eventually be repaid in full.

If you are not putting your property up for sale immediately you will not usually be able to claim means-tested benefits but you can receive AA/DLA (Care component) if you will be repaying the assistance provided by the local authority at some point in the future. Age Concern's Information Sheet IS/13, *Care Home Funding and Attendance Allowance*, gives further information about the payment of benefits in care homes.

During the period of the agreement no interest can be charged but, if your property remains unsold for longer than 56 days after your death, interest may start to accrue upon the debt.

2.5 Local authority powers to collect debts

If you are unwilling to pay your assessed contribution either now or in the future and own a property whose value is not ignored, the local authority can create a 'legal charge' against the value of the property, under Section 22 of the *Health and Social Services and Social Security Adjudication Act (HASSASSA) 1983*, and reclaim the money when the property is sold.

The local authority does not need your permission in order to create a legal charge under HASSASSA but should declare in writing that a charge is being created, and advise or assist you to consult a solicitor.

These provisions should only be used where residents are unwilling to pay the assessed charge. Where residents are willing to pay but are unable to do so immediately, deferred payment agreements should be used.

The debt will accrue in the same way as under a deferred payment agreement. Interest cannot be added to a charge created under HASSASSA while the resident is alive but can be from the day after the resident dies (unlike the deferred payment agreement which allows 56 days before interest is charged).

If the local authority 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 local authority can delay enforcing its debt until the resident dies or possibly until anyone else living in the house dies.

The Department of Health's advice is that where more than one person owns the same piece of land, the local authority cannot place a charge on the property. It advises that the local authority register a caution instead. This means that the local authority will be informed when the house has been sold. (See Sections 3.2 - 3.4 regarding the valuation of jointly owned property).

2.6 Paying for yourself whilst your property is up for sale

If, following the 12 week disregard, the local authority refuses to enter into a deferred payment agreement, it is likely that the authority's contract with the home will be ended and you will need to make your own contract.

The Department of Health has said 'we would not however condone the practice of advising or recommending residents to obtain a commercial loan'. Government guidance also says that having capital above the upper limit does not *in itself* mean that you should be expected to make your own arrangements in a care home.

Local authorities must satisfy themselves that you are *able* to make your own arrangements or have others who are *willing and able* to do so for you. If there is no one in this position, the authority should still make arrangements.

3. Valuation of property (Pension Credit and local authority assessment)

If a property is not disregarded (see Section 2.1) its value 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. The 10% rule is only for calculating the value of a property prior to its sale. Once the property has been sold the resident will be treated as having the actual share of the sale proceeds he or she receives once any secured debts and the actual expenses of sale have been paid.

3.1 Ownership of capital

In some cases there may be a difference between the legal and the beneficial ownership of a property. You are treated as having a beneficial interest in a property if you would be entitled to a share of the proceeds if it were sold. If you contribute towards the purchase price of a property, or otherwise contribute towards it later on, you may be able to establish a beneficial interest in the property, even if it is legally owned by someone else.

If a property is purchased under the 'right to buy' scheme at a discounted price, the person who attracted the discount may be treated as having a beneficial interest equivalent to the discount obtained, even if he or she did not contribute any money towards the purchase.

If the beneficial interests in a property are disputed it may become necessary to consult a solicitor. If more than one person has a beneficial interest then the property will be valued as if it is jointly owned.

3.2 Local authority assessment and the valuation of jointly owned property

Jointly owned property is valued differently from other capital in that the local authority can take account of joint owners having different interests, rather than assuming that each has an equal interest.

Where a resident is joint owner of a property the local authority should base its valuation upon the value of resident's interest in the property under the current circumstances rather than the share of the proceeds the resident would receive were the whole property to be sold. The value of that interest depends on whether anyone would be willing to purchase it from the resident in the current circumstances.

Guidance contained in the Department of Health's *Charging for residential accommodation guide* (CRAG) at paragraphs 7.012 - 7.014 suggests that the value of a joint interest in property will be heavily influenced by whether the other joint owner or another interested party is willing to buy the resident's share. If not, it is highly unlikely that an outsider would be willing to buy into the property. In these circumstances the value of the interest, even to a willing buyer, could be very low or could effectively be nil.

Local authorities are advised to get a professional valuation if they are unsure of the resident's share or if the valuation is disputed by the resident.

The Local Government Ombudsman has previously suggested that a local authority should have 'significant evidence or opinion giving it reason to disagree' when refusing to accept that an interest in jointly owned property had a low or nil value (Complaint 03/C/09384).

3.3 Pension Credit and jointly owned property

The Pension Service also has to take account of a person's actual interest in a property rather than assuming that joint owners have equal shares. If there is little or no market for the resident's share in the property, its value may be low or even nil, particularly if the joint owner lives in the property.

If you are unhappy about the valuation you should appeal. If the property is subsequently sold, you will be treated as having the share of the proceeds to which you are entitled.

3.4 Renting out property

You may want to rent out your property and put the income generated towards your care home fees. Anyone considering this should seek legal and financial advice.

The capital value of an interest in a property that has been rented out is still taken into account in the means test by the local authority, and for Pension Credit. Your share of the rental income will also be included in the assessment of your eligibility for assistance. If a property covered by a deferred payment agreement is rented out, the rental income may mean that the debt to the authority accrues at a slower rate than would otherwise have been the case. For more details ask your local authority, the Pension Service or an advice agency.

4. Deprivation of assets

Often someone's home is their main asset and one that they would like to pass on to their beneficiaries. It can therefore seem an attractive option to transfer property out of your name, for example to children or into a trust, in order not to have to use its value to meet care costs.

Caution is advised before taking any such action: the local authority can look at any such transfer and, if it seems that it was done in order to obtain assistance more quickly than would otherwise be the case, may assess you as if you are still in possession of the transferred property. Similar rules apply to means tested benefits.

For further information see Age Concern Factsheet 40, *Transfer of assets, and paying for care in a care home*.

5. Partner or relative wishes to move from a disregarded property

Where a spouse, partner or other relative lives in a disregarded property, they may at some point wish to move from that property, perhaps to somewhere smaller and more manageable.

However the disregard only applies to property and once it has been sold the resident's share of the proceeds could be taken into account in the financial assessment.

Government guidance has expressed the view that it would not be reasonable for local authorities to treat a resident as having deprived themselves of capital if they make part of their share of the proceeds from the sale available to their spouse to buy a more suitable property. Unmarried partners and other relatives on whose account the original property has been disregarded should ask to be treated in the same way as a spouse by the authority if they wish to move.

The current guidance does not cover some related issues, such as how any funds left over after the purchase should be apportioned or whose name the new property should be put into. The approaches adopted by individual local authorities on these and other related points may vary.

See Age Concern Factsheet 39, *Paying for care in a care home if you have a partner*, for more details.

6. Challenging local authority and benefits decisions

If you disagree with a decision about the local authority assessment there is a complaints procedure that you can follow. Ask the local authority for details of its procedure, which it is required to provide. If you are not satisfied with the outcome after taking your case through the local authority complaints procedure, you can pursue it via the Local Government Ombudsman.

If you disagree with a decision about your entitlement to benefits you can either ask for the decision to be revised or appeal against it. There are strict time limits for challenging a decision: in most cases, this must be done within one month of the date of notification. Further information is available in DWP leaflet, GL24.

A local advice agency may be able to offer advice or help you make an appeal against a social security or local authority decision.

There may not be a satisfactory solution to your problem. If you feel the rules are unfair then ask your Member of Parliament to raise the issues with either the Secretary of State for Work and Pensions, or the Secretary of State for Health.

7. Further information from Age Concern

The following factsheets/information sheet may be relevant:

Factsheet 10	<i>Local authority charging procedures for care homes</i>
Factsheet 39	<i>Paying for care in a care home if you have a partner</i>
Factsheet 40	<i>Transfer of assets and paying for care in a care home</i>
Factsheet 41	<i>Local authority assessment for community care services</i>
Factsheet 48	<i>Pension Credit</i>
Info Sheet IS/13	<i>Care Home Funding and Attendance Allowance</i>

If you would like

- to find your nearest Age Concern
- any additional factsheets mentioned (up to a maximum of 5 will be sent free of charge)
- a full list of factsheets and/or a book catalogue
- to receive this information in large print

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ. For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

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