
Factsheet 38 ● April 2010

Treatment of property in the means test for permanent care home provision

About this factsheet

This factsheet explains how property is dealt with in the local authority means test for the provision of care home accommodation. It is aimed at individuals who are 60 and over.

The information in this factsheet is correct for the period April 2010 – March 2011. Capital limits and other figures are expected to increase again in April 2011 but rules and figures sometimes change during the year.

This factsheet describes the situation in England. There are differences in the rules for funding care in a care home in Northern Ireland, Scotland and Wales. Readers in these nations should contact their respective national offices for information specific to where they live – see section 14 for details.

For details of how to order other factsheets and information materials mentioned in this factsheet go to section 14.

Note: Many local Age Concerns are changing their name to Age UK.

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1 Recent developments

- New, revised, social care eligibility guidance was introduced in February 2010 to replace the existing *Fair access to care services* guidance, which was introduced in 2003. This incorporates the new approaches developed as part of the Government's personalisation agenda and will need to be applied from April 2010. The new guidance is called *Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care, Guidance on Eligibility Criteria for Adult Social Care*.
- From October 2010, adults who fund their own residential or non-residential social care will have access to an independent complaints review service provided by the Local Government Ombudsman. This right is included in the *Health Act 2009*, which received Royal Assent (became law) in November 2009.
- Subject to legislation, new Regulations for the registration of all regulated adult health and social care service providers will commence in April 2010. This is with the Care Quality Commission. In a staged process adult social care services will be required to register on 1 October. This means that present registration under the *Care Standards Act 2000* continues until 30 September 2010.

2 Property and the local authority means test

If the local authority helps with your care home placement and fees, they will carry out a means test to see whether you should contribute to the cost. Before you can receive any financial assistance with the cost of care home accommodation, the local authority must assess your care needs and agree that they meet its criteria for the type of care required. Further information about getting a social care assessment is contained in Factsheet 41, *Local authority assessment for community care services*.

Local authorities must adhere to statutory guidance set down in a Government document called the *Charging for residential accommodation guide* (CRAG), which is written in support of *The National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977)*. CRAG is updated each April and can be viewed and downloaded from the Department of Health website at:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_097578

The information in this factsheet is mainly based on the CRAG guidance.

If you are a care home resident with capital over certain limits you generally have to meet the full cost of your accommodation and personal care in a care home. For the financial year 2010/11, the upper capital limit in England is £23,250. Capital can be in a variety of forms including savings, investments and property. Your income will also be taken into account in the means test. More detailed information on the charging rules can be found in the Factsheet 10, *Paying for permanent residential care*.

2.1 Property that is not included

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 60 years old or over, or a younger relative who is 'incapacitated'. The term 'relative' includes: parent (including an adoptive parent); parent-in-law; son (including an adoptive son); son-in-law; daughter (including an adoptive daughter); daughter-in-law; step-parent; step-son; step-daughter; brother; sister (the spouse, civil partner or unmarried partner of any of those previously listed); grandparent; grandchild; uncle; aunt; nephew or niece. 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 or

- 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 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.

Note: The Government has issued new English guidance, which comes into force from 6 April 2010. This provides for the qualifying age for those social security benefits and concessions where provision is aligned with the age at which women become eligible for state pension, to increase from 60 to 65 between 6 April 2010 and 5 April 2020. Eligibility for benefits and concessions that are tied to the state pension age for women may affect both men and women. These changes affect Pension Credit and a number of other benefits and concessions. For further information see the Directgov website: www.direct.gov.uk/en/Pensionsandretirementplanning/StatePension/DG_069498

2.2 The first 12 weeks of permanent care

The local authority must disregard property for all residents 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 run from the date it is decided your care is permanent. If your property is sold within this 12-week period the disregard ceases to have effect from the date of sale and the proceeds will be counted as capital.

If you enter permanent care and initially pay your care fees without local authority assistance, the 12-week disregard should be applied from the date you subsequently apply for local authority assistance.

Many local authorities have previously argued that the 12-week period runs from the date of admission to permanent care rather than the date when assistance is requested from the local authority. The Department of Health has now clarified 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 because of their financial situation – see *Local Authority Circular LAC (DH) (2009)3* and the 2009 CRAG update for further details.

If a local authority does not offer you the 12-week 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 above information.

Action: If the local authority knows that you own your own home but doesn't tell you about the available disregards, you should complain using the authority's complaints procedure. The local authority could be liable to reimburse you if it fails to allow you a mandatory disregard and you pay more towards your care costs than you should have as a consequence.

2.3 Pension Credit and 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 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 while the property is being taken into account in the assessment.

See Factsheet 48, *Pension Credit*, for further information.

3 Valuation of property

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 before 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.

4 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 as a loan, 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.

Local authorities have discretion about 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.

Note: Local authorities have been told to make residents (and potential residents) aware of their deferred payments scheme, and to explain which residents they are most likely to help.

If they have not mentioned their scheme you should enquire about it. It should be among the choices discussed with you when you are considering how best to fund your care home placement.

In *Local Authority Circular (2009)28, Charge for residential accommodation – CRAG Amendment*, local authorities are advised that: 'they could be challenged if they did not consider exercising their discretion to offer deferred payments in individual cases'.

The Local Government Ombudsman (LGO) has found maladministration where a local authority failed to introduce a deferred payments scheme and also where a local authority did not offer a deferred payment and the client incurred loss as a result. The amount of the loss was repaid to the claimant. You can get further information from the LGO if you visit www.lgo.org.uk

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 local 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. 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 that 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 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 reached such a level that, if it were repaid, your remaining capital would be below the upper capital limit, the debt would 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 more detail in Factsheet 10, *Paying for permanent residential care*.

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 while their property is up for sale, can receive both benefits provided 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.

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 on the debt.

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 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 section 8 regarding the valuation of jointly owned property.)

6 Paying for yourself

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 care 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.

7 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.

8 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 on the value of the resident's interest in the property under the current circumstances rather than the share of the proceeds the resident would receive if the whole property were 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) paragraphs 7.017–7.020 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.

Note: The paragraph numbering above for this section has changed slightly from previous editions of CRAG.

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).

Local authorities are advised to obtain an independent professional valuation if they are unsure of the resident's share or if their valuation is disputed by the resident. *Local Authority Circular (DH)(2010)2* was introduced in April 2010. It contains the following guidance at paragraph 21:

Where a valuation is disputed, it is desirable the dispute should be resolved quickly. We would expect councils to obtain an independent valuation of the resident's beneficial share of the property and try to establish an agreed valuation within the 12-week disregard period. This will enable councils to work out what charges a resident should pay and enable the resident, or their representative, to consider whether to seek a deferred payments agreement with the council.

The '12 week disregard period' refers to the property disregard, discussed above in section 2.2, for all residents for the first 12 weeks of being a permanent resident in a care home funded by the local authority.

It is important to remember that both CRAG and Local Authority Circulars exist under section 7(1) of the *Local Authority Social Services Act 1970*. This means that local authorities have a duty to act in accordance with this type of guidance unless there is an exceptional reason not to do so. Unjustifiable delays in obtaining an independent professional valuation can be challenged through the local authority complaints procedure. It may also be necessary to refer the complaint to the Local Government Ombudsman in some circumstances.

8.1 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 care home 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.

See section 2.1 for information about changes to the pension age and certain benefits based on the figure, which will come into effect from April 2010.

9 Renting out your 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 local authority assistance. However, rental income is ignored for Pension Credit purposes for a property that you are not occupying as your home. Instead, the value of the property (if it cannot be disregarded) is treated as producing a 'deemed income', which is also known as 'tariff' income. 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.

10 Giving away your 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, so that you do not 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 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 Factsheet 10, *Paying for permanent residential care*, and Factsheet 40, *Deprivation of assets*.

11 Moving from a disregarded property

Where a spouse, partner or other relative lives in a disregarded property, they may at some point wish to move, 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 suggested 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.

12 Challenging local authority and benefits decisions

If you disagree with a decision about the local authority assessment there is a complaints procedure 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 of your complaint you take it to the Local Government Ombudsman. For information about the new local authority complaints procedure and other avenues of complaint see Factsheet 59, *How to resolve problems and make a complaint about a local authority*.

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 the Department for Work and Pensions leaflet GL24 *If you think our decision is wrong*.

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

Action: There may not be a satisfactory solution to your problem. If you feel the rules are unfair 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. Contact Age UK for further information on how to complain about the local authority.

13 Useful organisations

The Care Quality Commission

The independent regulator of adult health and social care services in England, whether provided by the NHS, local authorities, private companies or voluntary organisations. Also protects the rights of people detained under the Mental Health Act.

Tel: 03000 616 161

Website: www.cqc.org.uk

Carers UK

National charity working on behalf of carers. Offers wide range of information on carers' rights and sources of help and contact details for local carers' support groups.

Tel: 0808 808 7777 (free call)

Website: www.carersuk.org

Citizens Advice Bureau (CAB)

National network of free advice centres including advice about national housing provision.

Tel: 020 7833 2181 (for contact details only – not telephone advice)

Website: www.citizensadvice.org.uk

Counsel and Care

A charity that provides advice for older people, their families and professionals on community care and other issues.

Tel: 0845 300 7585 (lo-call rate)

Website: www.counselandcare.org.uk

Department of Health

Government department with overall responsibility for social care including residential care homes.

Tel: 020 7210 4850 (national call rate)

Website: www.dh.gov.uk

Elderly Accommodation Counsel

Provides information on all forms of accommodation, support and care for older people.

Tel: 020 7820 1343

Website: www.HousingCare.org

Pension Service (The)

For details of state pensions, including forecasts and how to claim your pension.

Tel: 0845 60 60 265 (lo-call rate)

State Pension Forecasting Team: 0845 3000 168 (lo-call rate)

Relatives & Residents Association (The)

The Relatives & Residents Association gives advice and support to older people in care homes, their relatives and friends.

Tel: 020 7359 8136

Website: www.relres.org

Veterans UK

Website bringing together services for veterans including advice on pensions, compensation and welfare services.

Tel: 0800 169 22 77

Website: www.veterans-uk.info

14 Further information from Age UK

Visit the Age UK website, www.ageuk.org.uk, or call Age UK Advice free on 0800 169 65 65 if you would like:

- to order copies of any of our information materials mentioned in this factsheet
- to request information in large print and audio
- further information about our full range of information products
- contact details for your nearest local Age UK/Age Concern.

Books from Age UK

We publish a wide range of books for older people and those who care for and work with them. The following title may be of particular interest:

Your rights to money benefits 2010–2011

All you need to know about the full range of benefits for the over 60s.
£5.99

To order this book visit www.ageuk.org.uk/bookshop or to request a free books catalogue please call our book order line 0870 44 22 120 (lo-call rate).

Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65
Website: www.ageuk.org.uk

In Wales, contact:
Age Cymru: 0800 169 65 65
Website: www.agecymru.org.uk

In Scotland, contact:
Age Scotland: 0845 125 9732
Website: www.agescotland.org.uk

In Northern Ireland, contact:
Age NI: 0808 808 7575
Website: www.ageni.org.uk

Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and through calls to Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 80 80 (8.30 am–5.30 pm) or visit www.ageuk.org.uk/donate

Legal statement

Age UK is a registered charity (number 1128267) and company limited by guarantee (number 6825798). The registered address is 207–221 Pentonville Road, London, N1 9UZ. VAT number: 564559800. Age Concern England (charity number 261794) and Help the Aged (charity number 272786) and their trading and other associated companies merged on 1 April 2009.

Together they have formed Age UK, a single charity dedicated to improving the lives of people in later life. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.

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