

Community Care

Your legal rights



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community
legal advice

If you or someone you know or look after finds it difficult to manage day-to-day living, you may be able to get help in the form of community care. This leaflet explains how to find out what help you may be able to get, and whether you will have to pay for it.

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 22 for sources of information and advice.

Many of us will need a helping hand with everyday tasks at some point in our lives. You may have an impairment or illness, or you may look after a child or adult who cannot look after themselves. This may be someone who has a physical or learning disability, or someone who is elderly. Whoever they are, they may be able to get 'community care' – help that can include anything from meals on wheels to temporary or permanent stays in a care home.

Who decides what sort of care I need?

The first step to getting help is to contact your local council's social services department and tell them about your situation. They should be able to give you a copy of the guide 'Social Care: Choosing the right service for you'. You can also get this from the Commission for Social Care Inspection – see 'Further Help' on page 22 for details.

Your council must assess you to find out what sort of social care support services you need because of:

- your age;
- an illness, including problems caused by alcohol or drug misuse; or
- a disability.

The law defines people with a disability as people who are:

- blind, deaf or dumb;

- seriously or permanently handicapped by an illness, injury or congenital deformity, or suffering from a mental disorder as defined under the Mental Health Act; or
- partially sighted or hard of hearing.

You can also ask for an assessment for someone else if they need help (for example, a relative or neighbour).

Social services should tell you how long the process is likely to take. In the case of older people, they should aim to complete your assessment within 28 days of you asking for it, although complicated cases often take longer.

What will an assessment say?

If your assessment shows that you need certain services, your council must usually provide them or give you a 'direct payment' to cover the cost of obtaining them (see 'What are direct payments and how can I use them?' on page 8 for more about this). These services include:

- practical help at home;
- equipment to help with a disability;
- help with adapting your home;
- getting meals at home or somewhere else;
- being given (or given help to get) a phone or any special equipment you need to use one;

- help to take part in educational and recreational activities at home and outside (for instance, a place at a day centre), including help with getting there and back; and
- help with holidays.

Your council should work with health authorities so that your assessment also covers any health services you may need. If you live in an area where a care trust has been set up to deliver both health and social care services, the care trust will carry out your assessment. If you're concerned only about help to do with your health, contact your GP. Your doctor can get in touch with other people who provide healthcare and who can meet your particular needs. Different areas have different rules about what you can get. You may be able to get, for example, visits from community health providers at home (such as a district nurse, health visitor, physiotherapist or chiroprapist).

Do I have to be on a low income to be assessed?

You should be able to have an assessment, no matter how much money you have. If the council refuses to assess you because it thinks you could afford to buy care for yourself, you should get expert advice (see 'Further help' on page 22).

Can I get help if I look after someone?

If someone regularly relies on you for care, you have the legal right to ask for an assessment. This type of assessment will be carried out by social services, and is meant to support carers by making sure that:

- the person being cared for gets the right support and services;
- the carer has a choice over the type of caring tasks they do and how much time they spend; and
- the carer's work, education, training and leisure needs are considered.

Social services must make you aware of your right as a carer to an assessment of your needs. The NHS and councils are encouraged to work together to give better support to carers.

If you care for someone and you need support or advice, contact Carers UK or visit the government website www.direct.gov.uk/carers (see 'Further help' on page 22).

How is the assessment done?

Each council has its own way of working out what help you may be able to get. You can find out about your council's policies in its:

- long-term care charter; and
- Children and Young Persons Plan.

You should be able to get these from the social services department.

You may also find them in your GP's surgery, Citizens Advice Bureau or library.

You (and anyone who cares for you) should be fully involved in the assessment, and you should get the chance to say what you feel you need. If you need an interpreter or advocate to help you, the council should provide one. The aim of an assessment is to:

- find out what sort of support you need;
- decide which services might help; and
- look at your finances, including whether you may be able to claim any benefits.

You may be asked questions about:

- the tasks you can and can't do;
- the tasks you find difficult some of the time;
- whether you have to follow a special diet; and
- whether you have special needs (because of your religious or ethnic group, for example).

Who does the assessment?

The person assessing you will normally be from social services,

though they may be from the NHS. Other people may take part, too. For example, an occupational therapist may give advice on making your home easier for you to live in (such as fitting stair or grab rails, bath seats or special taps). The assessment will often be done in your home, but it could also be done at a social services centre or in your GP's surgery.

The local housing authority may also be asked for its views on certain issues, such as whether you need to be rehoused, for example to sheltered housing.

The person who assesses you should keep notes of:

- what is said;
- the things they have found you need; and
- whether there is anything you and they disagree about.

Many councils provide copies of the assessment. If yours does not, ask for one. If you are not going to get help, you should get a statement saying why.

You usually have a right to see any other personal information that social services departments hold about you. You can ask them to change anything you think is wrong.

What happens after my assessment?

Part of the assessment process is to decide what help you qualify for. Once that has been decided, a care plan should be drawn up for you.

Government guidance says that in deciding who can get care, councils should take into account how far people are at risk. At the same time, councils are allowed to 'ration' their services by limiting the number of people who can get them. They often do this by deciding that only those people who need a service most can have it. Your council has to help you only if you qualify under its policy. For example, you may need help with household cleaning, but you won't qualify if the council says it will usually only give that kind of help to people who also need help with washing and dressing.

If you find yourself in this position – that you need help but don't qualify for it – then you can challenge the decision (see 'What if I have difficulty getting the care I need?' on page 19). And even if you're not eligible for help, your council should still give you information or advice.

What is a care plan?

You should be given a copy of your care plan, which should set out:

- your needs;
- what services you will get (or the amount of direct payments you will receive, see 'What are direct payments and how can I use them?' on page 8);
- any charges to be made; and
- a date when the plan will be reviewed.

The council may give you some services itself. It may also arrange for you to get some services from other organisations, such as voluntary groups or private care agencies. If you have a carer, your plan should also show what help your carer has agreed to give you.

The council should look at your care plan from time to time; normally within three months of the help being provided and then at least once a year after that. But if your circumstances change at any point, you can ask to be assessed again. And if the council wants to take away or reduce what you get, it must reassess you first. It cannot take away services just because it is short of money, and it cannot take them away if that would leave you at 'severe physical risk'.

Once your care plan has been drawn up, you should start getting that care promptly. Councils should not use

their financial resources as a reason to delay providing you with care once they have assessed you as needing it. If there is a waiting list for a service you need, then the council should make other arrangements for you in the meantime. You can challenge a failure to provide you with care (see 'What if I have difficulty getting the care I need?' on page 19).

If you are disabled, the council should produce a care plan that helps you to be as independent as possible. However, this support should be provided as cost-effectively as possible. So, for example, the council may want to move you into a care home because it believes this would better meet your needs and because it would cost much less than giving you the care you need in your own home. You would have the right to say you don't want to move into a care home. But if you chose to stay in your own home, you might not get all the help you needed. For example, if the council would have to pay £500 a week towards the cost of a place in a care home, it might argue that it should give you care at home worth only that much, even if that wouldn't be enough for your needs. In this situation the council must consider all your needs, including your psychological needs, and your human rights, before it decides that

it will not fund a full care package at home. If you are unhappy with what the council has decided for you, you may be able to challenge its decision.

Your assessment may say that you need short-term 'intermediate care' at home or in a care home. This may include both health and social services. Intermediate care is care that can be provided only for a limited time (usually no more than six weeks) so that you don't have to go into hospital or to stay there when you don't really need to.

Who pays if I get care in my home?

In some cases, councils should pay for some or all of the costs of care in your home:

- If you suffer from CJD (Creutzfeldt Jacob Disease), you shouldn't pay anything.
- If you have been kept in hospital because of a mental illness or disorder and you need care when you come out ('aftercare'), you do not, in certain cases, have to pay for that care.
- Any help you get as part of 'intermediate care' should be free.

Otherwise, you may have to pay for your services.

Councils must not take account of your financial circumstances when deciding what you will get – only

when deciding what they will charge you for it. And your friends or family cannot be made to pay for your care – only the person getting the care can be charged.

How much will I have to pay?

When working out how much to charge you, councils should take into account:

- how much the service costs; and
- how much you could reasonably be expected to pay. To work this out, they are allowed to ask you how much income you get and what savings you have.

They should also follow government guidelines on charging. These aim to ensure that councils are consistent and fair and do not leave people struggling to pay. If you feel you cannot pay, you can ask social services to review the charge. You should always do this if you think they haven't taken into account any extra things you have to pay for because of a disability or other problem.

Your services cannot be taken away if you don't pay, but the council can try to get you to pay what you owe.

What are direct payments and how can I use them?

Instead of giving you services, councils must offer you the option of getting direct payments – money to pay for your own care (if you meet certain

conditions). If you are a carer, you may also be able to get direct payments.

You can use direct payments to pay for almost any care you need. For example, if you can't do your shopping alone, you could use a direct payment to help you do it yourself – for example, by paying for a taxi or a home delivery – or to pay someone to do it for you. Or you could pay for some care while your carer has a break. You can't normally use direct payments to pay for care provided for you by your husband, wife, civil partner or other partner, or a close relative who lives with you. And you can't use direct payments to pay for a permanent place in a care home or to buy care from the council.

Direct payments give you more choice about who cares for you and how. But if you use direct payments, it may mean you have to become an employer. This involves having to sort out contracts and deduct tax and national insurance from the money you pay people. Your council should be able to give you practical advice about dealing with these things. The Department of Health also produces a guide to direct payments (see 'Further help' on page 22).

You can decide at any time that you don't want to get direct payments any more, and would rather have

services arranged for you.

The council can stop direct payments if it thinks that:

- your needs are no longer being met;
- you can't manage your payments; or
- you aren't spending the money properly.

However, it should warn you and give you the chance to discuss the matter and put right any problems you are having before this happens.

What if I am unhappy with an assessment?

You can use your council's complaints system if you are unhappy with your assessment. For example, if:

- the council refuses to assess you;
- it leaves you waiting a long time to be assessed; or
- you are not happy with how the assessment was done.

You can also complain about the result of your assessment. For example, if you:

- think you are not getting the services you need;
- think you are being asked to pay too much for the services you use; or
- have problems with the services themselves.

If a care trust did your assessment, you could complain to the trust in the first place, but the council is ultimately responsible for providing the services.

If you are unhappy with the way a care trust or council deals with your complaint, you can take your complaint further. See 'What if I have difficulty getting the care I need?' on page 19 for more about how to complain.

What if I am coming out of hospital?

If you are in an NHS hospital, you should be assessed before you leave to work out what support or services you may need. This assessment looks at whether:

- your needs mean that the NHS should remain responsible for 'continuing care' (even if you go into a care home or return to live in your own home);
- you need to go into a care home with social services support (with or without some nursing care); or
- you can go home, perhaps with social services support, and get the healthcare you need as an outpatient, in your own home, or at a local centre.

In England, the hospital must tell

your local social services department if you are likely to need care services after leaving hospital. Also, if you are coming out of a hospital where you are receiving 'acute care' (for example, after an operation or treatment following an accident), your local council must carry out a care assessment within strict time limits and put together a care plan so that it is safe for you to leave hospital. If you have a carer, the care plan must consider their needs.

After you've been assessed you should be given written details of:

- how much you are likely to have to pay for care after you leave hospital;
- any benefits you may be able to get; and
- which parts of your care will be arranged and paid for by the NHS.

If you are assessed as needing only social services support, social services must check that any support they have arranged is enough for you:

- within 14 days of you arriving home from hospital; and
- at least once a year after that.

If you are unhappy about plans for you to leave hospital, you can use the NHS and social services complaints procedures (see 'What if I

have difficulty getting the care I need?' on page 19 and 'What if I have a problem with NHS care?' on page 21).

When must the NHS pay for my continuing healthcare?

Your local NHS authority should assess your needs to decide whether you are eligible for a packages of care services arranged and paid for by the NHS if you're:

- at home and your needs have changed; or
- coming out of hospital.

If you are eligible for such a package (called 'continuing NHS healthcare'), then the NHS will pay for care either in a care home that provides nursing care, or for a package of care at your home.

In England, you will first be 'screened', using a checklist, to see if you might be eligible for NHS-funded care. If you might be eligible, you will be referred for a full assessment, co-ordinated by your local primary care trust and involving all the potential providers of care. However, if you don't pass the screening, you will still be able to ask your primary care trust to consider giving you a full assessment. The primary care trust should normally tell you whether you are eligible for NHS-funded continuing care within

two weeks of being referred for an assessment.

In Wales there is no screening stage – you go straight to the assessment stage.

If your assessment shows you need some nursing care in a care home, but not the kind that qualifies as 'continuing care', you will get some NHS help with the fees, but only to cover those parts of nursing care that require a registered nurse (see 'What if I need nursing care?' on page 12).

If you qualify for other specialist NHS ongoing healthcare services as an outpatient, such as diabetic advice, physiotherapy or chiropody, these will be free whether you get them in your own home, at a day centre, or in a residential or nursing home.

The Department of Health has a leaflet, 'NHS continuing healthcare and NHS-funded nursing care', that explains the process in England – see 'Further help' on page 22 for how to get it.

What if I don't agree with what has been decided for me?

If your assessment says you don't qualify for NHS continuing care and you don't agree with this, you may have a 'right to a review' of the

decision by an independent panel of people, arranged by:

- your strategic health authority if you are in England; or
- the local health board if you are in Wales.

But these panels will not look at whether the policies are fair, only at whether the rules have been applied properly to your case.

Your review should happen within two weeks of you asking for it, and you should not have to leave NHS care while it is taking place. You should receive the result of the review in writing. If you're not happy with its findings, or if you think the continuing care rules themselves are the problem, you can complain using the NHS complaints procedure (see 'What if I have a problem with NHS care?' on page 21).

You can refuse to go into a care home if the NHS will not pay for your care. However, if you are currently waiting to leave an NHS hospital, you cannot generally stay there for an unlimited time. In this situation, all the organisations involved should try to find suitable alternatives. These could be, for example, a package of services that mean you could go back to your own home. You can ask to be reassessed if

your situation changes and you think you may now meet the rules for NHS continuing support.

What happens if I need to move into a care home?

Your council should provide residential care for people whose needs mean they can't reasonably be expected to live at home or in supported accommodation (for example, a warden-assisted home).

The council will look at your circumstances, in particular your income, savings and other things you own, to decide whether you could arrange and pay for that care yourself or if it must help pay your fees. You should always be told how the council has worked out the amount you will pay, and you can ask for this in writing.

In some cases, residential care is free, no matter how much money you have. This includes where you are:

- moving into a home as an NHS continuing healthcare patient;
- getting temporary 'intermediate care'; and
- going into residential care after being held in hospital under certain parts of the Mental Health Act.

In most cases, though, you will have

to pay at least some of the fees. If you qualify for help, the social services department usually pays the fees. You will then have to repay some of this amount, depending on how much money you have.

What if I need nursing care?

If you are in a care home that doesn't normally provide nursing care, and you find you do need nursing care, the NHS will normally provide it free of charge through community nursing.

If you're assessed as needing to move into a care home that provides nursing care, whether you're moving from your own home, from another residential home or from hospital, your assessment may find that you are eligible only for some nursing care, not fully-funded NHS continuing healthcare. However, the NHS must pay for the part of your care that you need a registered nurse for, however much income or savings you have. The NHS will pay a flat rate for the nursing care you need, based on a national average weekly rate.

If you're assessed as not needing to go into a care home with nursing facilities but you decide to pay to go into one anyway, you won't be entitled to get the NHS to pay for

the nursing care part of your care. But if your needs change, your case can be reviewed.

If you are unhappy with your assessment, you can ask for a decision to be reviewed in the same way as for a 'continuing care' assessment on coming out of hospital.

Your care plan should set out the services to be provided by the council, for which you may have to pay, and the care paid for by the NHS. Once you're in the home, you should speak to the home manager if you think they are trying to charge you for parts of your care that are already paid for by the NHS.

What do I have to pay for care-home accommodation?

You may have to pay towards the fees for services not paid for by the NHS, such as accommodation and personal care. What you pay is based on a set of rules that take into account:

- how much capital you have, which includes savings, stocks and shares, and property you own; and
- your income, including money you earn and any benefits you receive.

The rules on this are complicated and we have set out only the main points

here. Organisations such as Age Concern, Help the Aged, and Counsel and Care can give you more information (see 'Further help' on page 22 for details).

The council looks only at your own income and savings when deciding how much you pay – it cannot normally take account of money or income that belongs to your husband or wife or family.

If you have more than a certain amount of capital (currently £21,500 if you live in England or £22,000 in Wales), then you will have to pay all the fees, whatever your income. You will also normally have to find a care home yourself. If you can't find one yourself, and you have no-one willing to do it for you, the council must help you (but you still have to pay the full fees).

If you have less than a certain amount (currently £21,500 if you live in England or £22,000 in Wales) or if your savings drop to this level, the council will look at how much you could afford to pay. All your income (except certain items that aren't counted) will have to go towards paying your care costs, apart from a small amount that you must be left with ('a personal expenses allowance'). If your income falls, you

should pay less and the council should pick up more of the bill.

When your capital falls to a certain level (currently £13,000 in England and £17,250 in Wales) it will no longer be taken into account at all, and your financial assessment will only take your income into account.

Will I have to sell my home?

The rules on charging for residential care set out when the council:

- cannot take the value of your home into account; and
- can choose to ignore the value.

In other cases the council must take the value of your share in the home into account. If this takes the total of your capital to over £21,500 if you live in England, or £22,000 if you live in Wales, then you will have to pay all your care-home fees. If you can't pay for your care-home fees out of savings or other money, you may need to sell your home.

However, the value of your home will not count if someone close to you lives in it. This includes:

- your husband, wife, civil partner or other partner (or, in some cases, your former partner);
- a relative who is 60 or over;
- a relative under 60 who is

'incapacitated' (for example, someone who is receiving a sickness or disability benefit); or

- a child or step-child of yours under 16 who you support.

The council may ignore the value of your house if someone who doesn't fit into these categories lives there – for example, a carer who is under 60.

If you own your home jointly with someone who does not fit into any of the categories above (for example, a relative under 60 or a friend), your share has to be valued. But if the person who owns your home with you won't or can't buy your share from you, so you could not turn your share into cash, the value of your share in cash terms may be low. If this were the case, taking the value of your share into account would not greatly affect your contribution to your care-home fees.

Your home's value is also ignored if you are going into a care home temporarily.

Even if the value of your home is counted in the long term, it is not included in any calculations for the first 12 weeks after you take up a permanent place in a care home.

If you need to sell your home to pay for care, you may not have to do this straight away if you can agree a

'deferred payment' arrangement with the council. In this case, the council puts off collecting your contribution, and puts a 'legal charge' on your property instead. It then reclaims the money you owe when the property is eventually sold (or when the value of your estate is sorted out after you die). Your local social services department will be able to give you more information about this.

Can I be forced to sell my home?

Only a court can force you to sell your home. But if you don't sell, and you end up owing fees to the council, it can put a 'legal charge' on your property without your permission. The legal charge means that when your home is eventually sold, the council will be able to collect its fees.

If you do have to sell your home, you may be able to get benefits to help you pay care fees until it is sold (see 'What benefits may I claim?' below). And if your property takes some time to sell, the council may put off collecting any fees from you until you have sold it.

What benefits may I claim?

If you are moving permanently into residential care, you may qualify for some welfare benefits, such as the following:

- If you move into a residential care home that you pay for yourself, you could claim benefits such as Attendance Allowance or Disability Living Allowance. But if the council is paying part of the fees, some benefits may be stopped after you have been in the home for four weeks.
- If you have a low income but the value of your home means you cannot get help from the council, you could claim Income Support (if you are under 60) or Pension Credit (if you are over 60) to help you pay care-home fees while you are waiting to sell your property. This can last for up to 26 weeks.
- If your savings were too high to qualify for income-related benefits before you moved into a home, you may find you become eligible once you have moved, because people living in residential care may qualify for benefits with a higher level of savings. In some cases, the value of your home does not count.
- If you are married or in a civil partnership and move into residential care while your husband, wife or civil partner remains at home, the things you own jointly will not be taken into account (except for savings, which

will normally be treated as if owned in equal shares). The amount of any Income Support or Pension Credit will be worked out as if you were both single. So for the partner in the care home, the higher levels of savings allowed for people in residential care will apply in working out whether he or she is eligible for the benefits.

- If you and your husband, wife or civil partner live in different residential care homes or nursing homes, you will be treated as if you were both single. So you will both be allowed the higher savings levels for residential care when your entitlement is being worked out.

For more about claiming benefits, contact your local social security office, Jobcentre or, if you are a pensioner, the Pensions Service. The Department for Work and Pensions website also has information – see 'Further help' on page 22. For more about your rights when claiming benefits, see the Community Legal Advice leaflet, 'Welfare Benefits'.

What choice of care home do I have?

If you need NHS continuing healthcare, the NHS decides where you will go to get the medical care you need. However, your wishes

should be taken into account as much as possible.

If the council is paying for some or all of your care, you can, within certain limits, choose the home you want. However, if you are waiting to leave hospital to move into a home, and the one you want will not have any places in the near future, you may have to go to another one or move back home with a care package until there is a place for you.

Once the council decides to help pay for your place in a home, it should tell you what it would normally expect to pay for a home that meets your needs (its 'standard rate'). This rate should be realistic. The council cannot say it will pay up to only £300 or £400 a week, for example, if that amount could not give you the kind of care you need in your area.

The council should give you a list of homes in the area that are within its price range and have vacancies. However, you can choose any home (including one outside your council's area, for example if you want to be near your children), as long as it:

- has a place available;
- can meet your needs as they have been assessed; and
- is willing to accept the council's terms and conditions (including, in

general, the price).

If you cannot find a home that meets your needs within the price range, the council should increase its limit. If it won't, you may need to challenge its decision.

What if I want to move to a care home that costs more than the council will pay?

You do not have to limit your choice to homes that come within the council's price range. But if you go for a more expensive home, you will need to get someone to pay the extra above what the council will pay ('top-up' or 'third-party contribution'). This could be a friend, charity or relative, but it cannot normally be your husband, wife or civil partner. You can't normally top up the fees yourself, except in a few specific circumstances – ask social services for details if you think you may want to do this.

If you do have someone to pay the extra, but after some time they can't carry on doing this, you may have to move to a cheaper home. But this can happen only if the cheaper home can meet your needs.

When you make your own arrangements for care, you can choose whichever home you like. But remember that you may at some point in the future have to get some

help with fees (if your savings run down, for example). If this happens and you are living in a home that costs more than the council normally pays for someone with your needs, you may have to move.

You should have to find someone to pay a top-up only if there is a vacancy in more than one care home that can meet your needs, and you choose the more expensive one. If you are being asked to find someone to top up your fees in any other circumstances, you will be able to challenge this.

Can I go to a care home for a trial period?

If you want to go to a home for a trial period before deciding whether residential care is right for you, you will generally be considered a temporary resident for the purposes of working out charges and benefits (see 'What if my move into a care home is temporary?', below). Any Housing Benefit, Income Support housing costs or Council Tax Benefit you get for your own home will be paid only for 13 weeks of any trial period.

What if my move into a care home is temporary?

You may need to go into a home temporarily – perhaps for a short-term break ('respite care'), while you get over an illness, or while you're

waiting for a place in sheltered housing. Your assessment should show whether your stay will be temporary or permanent.

You should not be charged anything for a short-term stay that is part of 'intermediate care'. There may be charges to pay for other temporary stays, but the rules for working out how much you pay towards them allow for the fact that you will still have your own home to keep up. Any charge must be 'reasonable'.

If you are going to be in the home for only a short time, the council does not have to do a 'means test' (a test to see if you are able to get financial help) for the first eight weeks of your stay.

If you are means-tested for a temporary stay, the council looks at your income and savings in the same way as if you are staying permanently. However, there are some important conditions relating to how it does this:

- The value of your home cannot be included in the assessment if you plan to go back and live there after your stay, or if you are trying to sell it to buy somewhere that will better suit your future needs.
- The council won't take into account certain parts of your income, including any benefits you

get to help towards your housing costs (for example, Housing Benefit or Income Support housing costs).

- The council must take account of bills you still have to pay for your home (for example, rent, mortgage payments, water rates and home insurance).

You may be able to get Income Support (if you are under 60) or Pension Credit (if you are over 60) to help you pay any fees while you are temporarily in a home. The rules are different to those for permanent residents:

- You will be treated as if you were still living in your own home. So if the amount of your savings means you're not entitled to Income Support or Pension Credit at home, you won't be able to get it when you're temporarily in a care home.
- The value of your home is not counted in your capital for a temporary stay.
- You are not assessed separately from your husband, wife, or civil partner or other partner. So the amount of capital and income you have between you will be considered in deciding whether you are entitled to any benefits. Pension Credit is calculated at the couples rate, but the partner staying at

home should be left with enough income for their needs.

What rights do I have when I am in a care home?

All care homes have to meet certain standards before they can be registered with the Commission for Social Care Inspection (in England) or the Care and Social Services Inspectorate in Wales. The government and Welsh Assembly lay down national standards setting out what you can expect from a home. These apply to any home, no matter who is paying for your care.

Your home must produce a service user's guide or brochure with details of its facilities and fees, and a contract that sets out, for example:

- the room you will live in;
- the care and services you will get;
- things not included in your fees; and
- the notice period you must give if you want to leave.

Homes must also tell you when and why they are going to increase fees. They must also tell you whether the fees you would pay are different from those a local authority would pay.

If you arranged the care yourself, the contract is between you and the home, and you should be given a copy of the contract. If the council or

the NHS arranged your care, then the contract is with them. If you didn't arrange the place yourself, you still have legal rights and you should be given a statement of the terms and conditions (which may be part of your care plan).

All registered homes must have a complaints procedure and should be able to give you information about how to complain. If you can't sort out the matter with the home, you can contact the Commission for Social Care Inspection (in England) or the Care and Social Services Inspectorate (in Wales).

You can also use the local council and NHS complaints procedures to complain about the parts of care in the home that they arrange or pay for. For more about the complaints procedures, see below.

What if I have difficulty getting the care I need?

By law, social services departments must have a complaints procedure and a complaints officer to supervise it. They must be able to give you information about:

- how to make a complaint;
- how quickly they should deal with it; and
- where you can get help with making a complaint.

Normally, councils will try to deal with complaints informally, perhaps by seeing if you and the social services officer you usually deal with can sort out things between you. If this 'informal stage' doesn't solve your problem, you may want (or be asked) to go to a more 'formal' stage. This is usually an investigation, by either:

- someone who is not involved in the local service; or
- the Complaints Manager (in England) or Complaints Officer (in Wales), or someone they appoint.

If you're not happy with the result of the formal stage, you can ask for your complaint to be examined by an independent panel (in Wales) or a review panel (in England). These panels will include at least two people who are separate from the council. You can go to the panel meeting and you can have someone there to speak for you if you want.

If you are still unhappy, you should contact the Local Government Ombudsman (England) or the Public Services Ombudsman (Wales) – see 'Further help' on page 22.

In England, if your complaint involves NHS services, the council can pass it on to the NHS (or the other way around) if you wish. See 'What if I have a problem with NHS care?' on page 21). Where both health and

social services are involved, the council and NHS should give you a joint response to your complaint.

Councils must have a 'monitoring officer' (someone who makes sure the council is doing what the law says it must do). So if you think your council has broken the law (for example, if it won't pay for your residential care when you think the law says it should), you can ask the 'monitoring officer' to look at your case. Your local councillor or Member of Parliament may also be able to help. If these steps don't sort out your problem, you can take your case to the Secretary of State for Health (in England) or the Welsh Assembly (in Wales). However, you will need to get legal advice before you do this.

Another possibility is to use (or threaten to use) the courts, either to:

- sue the council for a 'breach of its legal duty' (though this can be difficult to prove); or
- get a judge to rule on whether the council's actions were legal, rational and reasonable (a process called 'judicial review').

You will need legal advice in either case. If you cannot afford to pay for a solicitor, and you meet other conditions, you may be able to get public funding (legal aid). See 'The Community Legal Service' on page 23

for how to find out more about this.

What if I have a problem with NHS care?

You can complain about any area of healthcare from the NHS. Your local Patient Advice and Liaison Service (in England) or Community Health Council (in Wales) should have information about the NHS complaints system and about independent help (complaints advocacy) in your area (see 'Further help' on page 22 for details).

The government is currently planning changes to the NHS complaints system. For now, if you have a problem, you must first contact the hospital, Foundation Trust, surgery or clinic involved. It should have a leaflet telling you how to make your complaint. You can also get help to make a complaint from a local independent complaints advocate in England (through the Independent Complaints Advocacy Service) or your Community Health Council in Wales.

If you can't resolve things at this stage:

- in England you can ask the independent Healthcare Commission to review your complaint; or
- in Wales, you can ask the Independent Complaints Secretariat for your area to review your complaint.

If you are still unhappy with the result of your complaint, you may be able to take it to the Health Service Ombudsman (in England) or the Public Services Ombudsman (in Wales).

Further help

Community Legal Advice

Provides free information direct to the public on a range of common legal problems.

Call 0845 345 4 345

If you qualify for legal aid, get free advice from a specialist legal adviser about benefits and tax credits, debt, education, employment or housing. Also find a high quality local legal adviser or solicitor.

Click www.communitylegaladvice.org.uk

Find a high quality local legal adviser or solicitor, link to other online information and see if you qualify for legal aid using our calculator.

Department of Health

The Department produces a range of publications including 'A guide to receiving direct payments from your local council' and 'NHS continuing healthcare and NHS-funded nursing care'.

phone: 0870 155 5455

www.dh.gov.uk/publications

Patient Advice and Liaison Service (PALS)

PALS offers information, support and advice in England. To contact your local PALS, phone your local hospital, clinic, GP surgery or health centre, or phone NHS Direct on 0845 46 47.

Independent Complaints Advocacy Service (ICAS)

ICAS provides advice and support to people who want to complain about the NHS. phone NHS Direct 0845 46 47 or contact your local Citizens Advice Bureau, which is listed in the phone book.

Community Health Councils (CHCs)

In Wales, CHCs can offer free confidential advice and independent help on making a complaint about an NHS service. Contact the Board of Welsh CHCs for details of your nearest CHC.

phone: 0845 644 7814

www.patienthelp.wales.nhs.uk

The Parliamentary and Health Service Ombudsman (England)

phone: 0845 015 4033

www.ombudsman.org.uk

Local Government Ombudsman (England)

phone: 0845 602 1983

www.lgo.org.uk

Public Services Ombudsman (Wales)

phone: 01656 641150

www.ombudsman-wales.org

Age Concern

phone: 0800 009966 (England)

029 2043 1555 (Wales)

www.ageconcern.org.uk

Help the Aged

phone: 020 7278 1114

SeniorLine: 0808 800 6565

www.helptheaged.org.uk

Alzheimer's Society

Helpline: 0845 300 0336

www.alzheimers.org.uk

Royal College of Nursing

phone: 0845 772 6100

www.rcn.org.uk

To download a copy of the Guide to Fully Funded NHS Care, go to www.rcn.org.uk/publications

Counsel and Care

phone: 0845 300 7585

Monday to Friday 10am to 12pm, and 2pm to 4pm Monday, Tuesday, Thursday and Friday

www.counselandcare.org.uk

Department for Work and Pensions

For information about claiming benefits

www.dwp.gov.uk

Benefit enquiry line: 0800 88 22 00

Carers UK

Carersline: 0808 808 7777 (Wednesday and Thursday only, 10am to 12 noon and 2pm to 4pm).

www.carersuk.org.uk

Commission for Social Care Inspection

phone: 0845 015 0120

www.csci.org.uk

Care and Social Services Inspectorate Wales

phone: 01443 848450

www.cssiw.org.uk/

Healthcare Commission

phone: 0845 601 3012

www.healthcarecommission.org.uk

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high-street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the website: www.communitylegaladvice.org.uk

*Community
Legal Service*



The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

legal services
COMMISSION

The leaflets are also available online at: www.communitylegaladvice.org.uk

- 1 Dealing with Debt
- 2 Employment
- 3 Divorce and Separation
- 4 Renting and Letting
- 5 Buying and Selling Property
- 6 Losing your Home
- 7 The Human Rights Act
- 8 Claiming Asylum
- 9 Welfare Benefits
- 10 Wills and Probate
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- 29 Care Proceedings
- 30 Neighbourhood and Community Disputes
- 31 Changing your Name

Advice Guides

G1 A Step-by-Step Guide to
Choosing a Legal Adviser

G2 A Step-by-Step Guide to Legal Aid

The leaflets are also available in Welsh, Braille and Audio.

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343**
or email LSCLeaflets@ecgroup.co.uk or fax 020 8867 3225.



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