FINANCING RESIDENTIAL CARE

LEGISLATION

The main government policy document on the management and delivery of community care services is **People First – Community Care in Northern Ireland in the 1990s**.

Legislation governing the provision of health and social care services includes the **Health and Personal Social Services (NI) Order 1972**, (as amended), the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978, the **Health and Personal Social Services (NI) Order 1991**, the **Health and Personal Social Services (NI) Order 1994** and **the Health and Social Care (Reform) Act (Northern Ireland) 2009**.

Regulations specifically covering the issue of financing residential care are to be found in the **Health and Personal Social Services (Assessment of Resources) Regulations (NI) 1993**, (as amended), the **Income Support (General) Regulations (NI) 1987**, (as amended), the **State Pension Credit Act 2002**, the **State Pension Credit Regulations 2002**, the **State Pension Credit Regulations (NI) 2003** and the **State Pension Credit (Miscellaneous Amendments) Regulations (NI) 2004**.

The practical rules governing a health and social care trust's (ability to charge residents for the residential care which they receive is contained in the **Charging for Residential Accommodation Guide (CRAG)**, which is Guidance issued by the Department of Health, Social Services & Public Safety (DHSSPS) and is regularly updated.

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INTRODUCTION

The cost of residential care is such that most people will at some point in their lives require assistance from health and social care trusts (HSC trusts) in paying care fees.

When a person is assessed as requiring residential care (which could be in either a residential care home or a nursing home), s/he may be vulnerable and worried as to how the care fees will be paid. S/he may require detailed advice on what will happen to her/his social security benefits (if s/he is receiving any) and her/his assets including savings and the home.

Once it has been established that a person requires residential care, a financial assessment will usually be carried out. It must be in accordance with the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993 (as amended), (HPSS'93 Regs) and will determine the level of contribution, if any, which s/he must make towards the cost of her/his care. Individuals can choose not to provide their financial information to the HSC trust to allow a financial assessment to be carried out. However, in these circumstances, HSC Trusts will be entitled to deem the person a self-funding resident.

The financial assessment looks at the resident's income and capital. The HPSS'93 Regs contain fixed capital limits which must be applied in assessing a person's eligibility for assistance with fees. Where a person falls within the capital limits for the purposes of obtaining assistance with residential care fees, the HSC trust looks at her/his income to determine whether or not assistance will be provided. The HSC trust takes into account most income including pensions and social security benefits. Exact details of the income taken into account can be obtained from Law Centre (NI) on request.

Whether or not a person receives social security benefits for the time s/he is in care is of great importance to health and social care staff. If income from those benefits is maximised, there is less reliance on funding from the HSC trust.

PART 1. SOCIAL SECURITY

Income Support and Pension Credit (PC) are the benefits paid to people with a low income who are not able to work and who satisfy certain conditions. A person must reach the qualifying age to claim Pension Credit. For further details see *Law Centre (NI) Encyclopedia of Social Welfare Rights A.8 Pension Credit, section 2.1.1.*

Some people become entitled to Income Support or PC for the first time when they enter residential care while others find that the amount of Income Support or PC they receive changes.

From a HSC trust's point of view, it is important that a person's entitlement to Income Support or PC is maximized in order that as much assistance as possible is received from the Social Security Agency (SSA) towards paying residential care fees.

The level of Income Support or PC to which a person is entitled varies according to the length of time spent in care and the setting in which the care was being provided, ie an independent or a trust home.

This section of the notes deals with a person's entitlement to Income Support or PC while in residential care and looks at the rules which the SSA applies in determining that entitlement.

1. PENSION CREDIT

PC is a means tested benefit for older people. It is intended to reward people aged 65 or over who have made some additional provision for retirement above the basic state pension. It consists of two elements:

- guarantee credit; and
- savings credit (for people aged 65 or over).

A person may be entitled to either the guarantee credit or savings credit or both.

1.1 Capital rules

There is no upper capital limit for PC If a person and/or her/his partner have capital over £10,000, they are deemed as having an assumed weekly income of £1 for every £500 (or part of £500) of capital over £10,000.

1.1.1 What counts as capital?

The term capital is not defined in PC regulations. However, it can be distinguished from income because a capital payment is a lump sum or one off payment made without being tied to a period and not intended to form part of a series of payments.

Savings count as capital. This includes money in a bank or building society, cash at home, shares and unit trusts. Fixed term investments are taken into account unless the money is unobtainable. An investment which can be realised before the end of a term, albeit with a loss of interest, is taken into account. Money or other assets held on trust are taken into account in certain circumstances where the person has beneficial use of the money or asset. The beneficiary of a non-discretionary trust who can obtain the money or asset at any time will have this counted in full as capital.

The rules in relation to discretionary trusts are significantly different. Where payments from the trust fund can only be obtained at the discretion of trustees, the full amount is normally ignored as a capital asset. However, payments received from the trust fund are normally counted in full, either as income or capital, depending on the nature of the payment. Some payments may be disregarded in full in certain circumstances.

Trust funds from personal injury compensation are ignored as capital, although payment out of such funds may count either as income or capital depending on the nature of the payment. A person who is holding an asset or money in trust as a trustee will not have this treated as capital providing s/he has no beneficial interest in the trust. Property and land generally come within the definition of capital but in some circumstances the value of these can be disregarded.

1.1.2 When is capital disregarded?

There is a range of circumstances where capital is ignored for the purposes of calculating entitlement to PC. The most relevant of these for a person entering residential care is usually when the value of the home is ignored.

1.1.2.1 The home

The term home includes the garage, garden, outbuildings, together with any land or other premises which are not occupied, but which it is unreasonable to sell separately.

While a person is living in her/his own home in the community, the value of the home is ignored as a capital asset. However, when a person enters residential care permanently, s/he is no longer treated as occupying the home and treatment of the property depends on who is left in occupation.

If a partner (including any person treated as a former partner for PC purposes because the person claiming has gone into residential care) or a relative who is aged 60 or over or is incapacitated remains at home, the value of the house is ignored. Incapacitated is not defined, but guidance suggests that this includes people getting an incapacity or disability benefit.

If the home is put up for sale, the value of the property is ignored for six months from the date reasonable steps were taken to dispose of the property. This period can be extended where it is considered reasonable in the circumstances. However, once the home is sold, the proceeds are treated as part of the capital of the person claiming.

There are other circumstances where the value of the home is ignored, but these will rarely be relevant to a person moving into residential care.

1.1.2.2 Other capital

In particular circumstances, other capital can be ignored. This includes personal possessions unless bought in order to claim or increase entitlement to PC, tax rebates, arrears of a number of social security benefits (ignored for up to a year), and the surrender value of any life assurance, endowment policy or annuity.

Any interest in property which a person will or may possess in the future, but does not possess at the time of assessment, is generally ignored as capital, unless the future interest is land or premises which have been let to tenants, in which case it is taken into account.

1.1.3 Valuation of capital

Under Regulation 19 of the State Pension Credit Regulations (NI) 2003, capital is valued on the basis of its current market value or surrender value less expenses attributable to sale and any debts secured on the asset eg an outstanding mortgage.

1.1.4 Joint ownership of capital

Regulation 23 of the State Pension Credit Regulations (NI) 2003 sets out that, if a capital asset is jointly owned, each person is treated as owning an equal share of the asset until such times as the asset is sold and the person is in possession of her/his actual share. For example, two people who own a home with one having a three quarters share and the other a one quarter share are treated as having a half share each. This potentially grossly unfair rule, which applies regardless of the legal and equitable position, was designed to simplify the valuation of joint assets. The value of that half share is then relevant for the purposes of PC.

The value of a half share of a home was considered in the English Court of Appeal decision of *Palfrey v CAO* (The Times, 17 Feb, 1995). The case related to an application for Income Support where one of two joint owners of a property went into residential care and the other was unwilling to vacate the property. The Court of Appeal accepted that the value of a half share in the property would be little or nothing since the prospect of finding a willing buyer would be negligible.

The government then attempted to amend the law to allow the market value of a jointly owned capital asset to be calculated as though the interest is solely owned by the person claiming and no other joint owner occupies the dwelling. However, subsequent cases overturned the amended regulations as unlawful and therefore the current position is that the value given to a person's share of jointly owned property should be what a willing buyer would pay for that share of the property which may be negligible.

1.1.5 Deprivation

Regulation 21(1) SPC Regs (NI) 2003 provides that a person who deliberately deprives her/himself of an asset in order to secure entitlement or increase the amount of PC payable will be treated as still possessing the asset, ie having notional capital. A number of narrow and specific exceptions apply which will almost never be relevant to residential care situations.

Where notional capital is assumed, a detailed formula is contained in regulation 51A for working out how the notional capital may be treated as spent (the diminishing capital rule).

The key question which determines whether this regulation should apply is that of motive: what has been the reason behind the person's decision to get rid of an asset? The onus of proof in establishing deliberate deprivation of an asset rests with the decision maker.

1.2 Calculating Pension Credit

1.2.1 Guarantee credit

A person's guarantee credit is calculated in three steps. To assess a person's entitlement to guarantee credit, calculate:

- appropriate minimum guarantee; then
- total income; then
- compare appropriate minimum guarantee and income.

1.2.1.1 Step one: appropriate minimum guarantee

A person's appropriate minimum guarantee represents the minimum amount of income that the government believes a person should have to live on each week. It aims to ensure that the weekly income of all those entitled is brought up to a minimum level.

The exact figure depends upon a person's marital status, whether s/he is part of a couple, any disabilities, caring responsibilities and eligible housing costs.

This figure is made up of:

- standard minimum guarantee; and
- additional amounts including housing costs.

Note: Those transferring from Income Support, Income-based Jobseeker's Allowance JSA(IB) or Employment and Support Allowance ESA(IR) to PC may also have a transitional amount included. See *Law Centre (NI) Encyclopedia of Social Welfare Rights A.8 Pension Credit, Section 5.*

The basic standard minimum guarantee is as follows:

Amount paid	
Single person	£155.60
Couple	£237.55

The additional amounts are as follows.

☐ Severe disability

This is payable when:

- a single person is in receipt of Attendance Allowance or DLA (higher or middle rate of the care component), and no-one is receiving Carer's Allowance (CA) for her/him and s/he has no non-dependants aged eighteen or over at home;
- both members of a couple are in receipt of a qualifying benefit and no one gets CA for either of them.

If a person entering residential care has a partner and they both satisfy the rules, they will each receive the additional amount.

If a partner is not in receipt of Attendance Allowance or Disability Living Allowance (DLA) higher or middle rate care component but is registered blind or if only one member of the couple has a carer receiving CA, one person may receive the additional amount.

Where one member of a couple goes into residential care, the claim is separated.

If the person claiming is going into care and is getting Attendance Allowance or DLA higher/middle rate care component, s/he will qualify for a severe disability additional amount during the first four weeks in care. After four weeks, Attendance Allowance or DLA care component will cease and entitlement to a severe disability additional amount ends.

Amount paid

Single person	£61.85
Couple – one qualifies	£61.85
Couple – both qualify	£123.70

☐ Carer

A person will qualify for this additional amount if s/he or her/his partner is entitled to Carer's Allowance (CA). This applies even if the person (or partner) is not actually in receipt of CA because s/he is in receipt of a benefit which overlaps with CA (for example Retirement Pension). If a person has a partner who also receives CA, then the additional carer's amount is awarded twice.

When entitlement to CA ends, the carer's addition will continue for eight weeks.

Amount paid £34.60

☐ Housing costs

When a person enters residential care on a temporary or respite basis, s/he may still receive an amount in her/his PC in respect of her/his housing costs for her/his home in the community. However, when a person enters permanent residential care, s/he loses the entitlement to housing costs.

1.2.1.2 Step two: income

Income is calculated on a weekly basis and almost all income which a person has will be taken into account.

For a couple, both partners' income is added together when calculating entitlement unless they are no longer living in the same household, in which case each partner is treated separately.

Some benefits are counted in full as income, eg Category A, B, or D of Retirement Pension and CA. Some are fully ignored, eg Attendance Allowance, DLA and Social Fund payments. Some are partially disregarded, eg War Widow(er)'s Pension and War Disablement Pension.

Charitable and voluntary payments, if not ignored in full, are usually partially disregarded.

Tariff income from capital is calculated at the rate of £1 for each £500 (or part thereof) over £10,000.

1.2.1.3 Step three: compare

The amount of a person's guarantee credit is the amount of her/his appropriate minimum guarantee less the total income.

If a person's income is higher than the appropriate minimum guarantee, then s/he will not be entitled to any amount of guarantee credit. S/he may however be entitled to an amount of savings credit.

If a person's income is lower than the appropriate minimum guarantee, then deduct the income from the appropriate minimum guarantee to get the amount of guarantee credit s/he is entitled to.

1.2.1.4 Case example

Ms C is 75 and a widow. She receives a retirement pension of £119.30, occupational pension of £45.00 and Attendance Allowance higher rate. She lives alone in Housing Association accommodation and has savings of £11,500. She is now going into care permanently. Her entitlement to PC standard minimum guarantee will be as follows.

- **Entitlement for first four weeks in care**

Needs	
Standard minimum guarantee	£155.60
Severe disability	£61.85
Appropriate minimum guarantee	£217.45
Income	
Retirement Pension	£119.30
Occupational Pension	£45.00
Income from capital	£3.00
Total income	£167.30

Entitlement to guarantee credit is **£50.15.**

- **Entitlement after four weeks**

Needs	
Standard minimum guarantee	£155.60
Appropriate minimum guarantee	£155.60
Income	

Retirement Pension	£119.30
Occupational Pension	£45.00
Income from capital	£3.00
Total income	£167.30

Ms C is no longer in receipt of severe disability additional amount and is **not** entitled to guarantee credit because her income exceeds her appropriate minimum guarantee.

1.2.2 Savings credit

There are six steps to calculating savings credit.

Step 1: calculate income;

Step 2: calculate appropriate minimum guarantee;

Step 3: calculate qualifying income;

Step 4: select relevant savings credit threshold;

Step 5: compare qualifying income with savings credit threshold;

Step 6: compare income with appropriate minimum guarantee.

1.2.2.1 Step one: income

This is calculated in the same way as the income for guarantee credit.

1.2.2.2 Step two: appropriate minimum guarantee

This is calculated in the same way as for guarantee credit

1.2.2.3 Step three: qualifying income

A person's qualifying income is calculated by taking her/his total income less:

- Working Tax Credit;
- Incapacity Benefit;
- Contribution-based JSA;
- Severe Disablement Allowance;
- Maternity Allowance;
- maintenance paid in respect of person or partner paid by her/his spouse, civil partner or former spouse or civil partner.

1.2.2.4 Step four: select relevant savings credit threshold

The current savings credit thresholds are:

single	£133.82
couple	£212.97

1.2.2.5 Step five: compare qualifying income with savings credit threshold

To qualify for a savings credit, a person must have qualifying income above the savings credit threshold.

Compare the qualifying income (step 3) with the savings credit threshold (step 4).

Where a person has qualifying income below the savings credit threshold then s/he will have no entitlement.

Where a person has qualifying income in excess of the savings credit threshold then calculate 60 per cent of the excess.

The maximum amount of savings credit a person can receive is:

single £13.07

couple £14.75

If the figure calculated (ie 60 per cent of the excess) is above the relevant maximum then the figure is capped at the maximum amount of savings credit.

The figure calculated here, whether it is capped or not, represents the person's maximum savings credit entitlement.

1.2.2.6 Step six: compare income with appropriate minimum guarantee

Where a person's income (step 1) is less than the appropriate minimum guarantee (step 2), s/he will receive a savings credit equal to the amount calculated at step 5.

Where a person's income (step 1) is more than the appropriate minimum guarantee (step 2), deduct the appropriate minimum guarantee from the income. Calculate 40 per cent of the excess and then deduct this figure from the amount calculated at step 5. This is the amount of savings credit s/he will be entitled to.

Where the figure calculated (ie 40 per cent of the excess) is more than the figure calculated in step 5 then there is no entitlement to savings credit.1.2.2.7 Case example

Remember Ms C. Her savings credit entitlement for the first four weeks in care is calculated as follows:

Step one: Income

Retirement Pension	£119.30
Occupational Pension	£45.00
Income from capital	£3.00
Total income	**£167.30**

Step two: **Appropriate minimum guarantee**

Standard minimum guarantee	£155.60

Severe disability	£61.85
Appropriate minimum guarantee	**£217.45**

Step three: **Qualifying income**

In this instance, there are no deductions and Ms C's qualifying income figure is the same as her total income.

Qualifying income	£167.30

Step four: relevant savings credit threshold

Single	£133.82

Step five: compare qualifying income with savings credit threshold

Qualifying income	£167.30
less savings credit threshold	£133.82
	£33.48
60%	£20.08

This is capped at the maximum savings credit of £13.07

Step six: Compare total income with appropriate minimum guarantee

Because Ms C's income of £167.30 is less than her appropriate minimum guarantee of £**217.45**, she is entitled to maximum savings credit. Therefore the figure calculated at step five, £13.07, represents her entitlement to savings credit.

For her first four weeks in residential care, Ms C is entitled to guarantee credit of £50.15 plus savings credit of £13.07, a total PC entitlement of £63.22.

Her income for these first four weeks is made up of retirement pension of £119.30 Occupational Pension of £45, PC of £63.22 and Attendance Allowance of £82.30, a total of £309.82.

After four weeks in care

Ms C's Attendance Allowance will cease after four weeks in residential care, which, when calculating her entitlement to guarantee credit, will remove her entitlement to the additional amount for severe disability. Her appropriate minimum guarantee will then drop by this amount, making her appropriate minimum guarantee less than her income. Therefore, after four weeks in care, Ms C is no longer entitled to guarantee credit.

As Ms C's income is now more than her appropriate minimum guarantee (£155.60), a 40 per cent taper must be applied to assess whether she remains entitled to savings credit.

40% taper

Deduct her new appropriate guarantee figure from her qualifying income.

Qualifying income	£167.30
Less appropriate guarantee figure	£155.60
Equals	£11.70
Take 40%	£4.68

Deduct this figure from the figure in step five

	£13.07
Less	£4.68
Equals	**£8.39**

After four weeks in care, Ms C remains entitled to savings credit of **£8.39.**

Her income now consists of Retirement Pension £119.30, Occupational Pension of £45 and PC of £8.39, a total of £172.69.

1.2.4 Temporary or respite care and Pension Credit

For couples where one is in care, PC is calculated and paid at the couple rate. This means that, on the face of it, they now receive less benefit than younger people who, if on Income Support, are treated as two single people when one is in care. Trusts are therefore required to exercise discretion to ensure that the partner at home has sufficient income for her/his needs.

2.INCOME SUPPORT

2.1 The capital rules

In order for a person to receive Income Support, s/he must have a low level of income and capital below specified limits. The capital limits are different for people living in the community from those living in residential care. The rules on capital are contained in Regulations 45-53 and Schedule 10 of the Income Support (General) Regulations (NI) 1987 as amended (Income Support Regulations).

A person living in the community is not entitled to Income Support if s/he and/or partner have capital in excess of £16,000. Capital of up to £6,000 is completely ignored for Income Support purposes. Capital of between £6,000.01 and £16,000 is assumed to generate a tariff income which is added to the other income which a person has (£1 for every £250 or part thereof).

When a person enters residential care on a temporary basis, the same capital limits are applied.

Note: A person cannot claim Income Support above the qualifying age for Pension Credit (s/he should claim Pension Credit instead) although if s/he has a partner aged under 60, the partner can claim Income Support for both. Before 6 April 2010, the qualifying age for Pension Credit for both men and women was 60. From that date, for both men and women, it is an age increasing to 65 between 2010 and 2018, in line with the increase in age for a woman under the Pensions Act 2011. Then from 2018 to 2020 the pension age for both men and women will increase to 66.

When a person enters residential care permanently, the limits change. Capital worth up to £10,000 is ignored completely, capital of between £10,000.01 and £16,000 generates tariff income and capital of above £16,000 means that s/he will not receive Income Support.

The capital limits applied by the SSA determine a person's eligibility for Income Support. HSC trusts apply different capital rules to determine whether or not a person is eligible for assistance with residential care fees.

Both members of a couple usually have their capital added together when assessing entitlement to Income Support. However, when one member of a couple goes into residential care permanently, both partners are treated as separate people for Income Support. The value of the joint capital is divided and one partner's capital is ignored when calculating the other partner's entitlement.

Note: Recent case law has suggested that, even if both members of a couple go into care permanently and are sharing a room in the same care home, they should not be treated as a couple but rather as separate individuals. The social security commissioners have taken the view that an essential attribute of a household is a domestic establishment and that, if the degree of independence and self-sufficiency falls below a certain level, there is no longer a domestic establishment and therefore no longer a household. This is particularly important where both members of a couple have capital which, when added together, prohibits them from receiving Income Support. If the members of a couple are to be treated separately, then their capital is not added together and one or other, or both of them, may then qualify for Income Support.

2.1.1 What counts as capital?

Capital is not defined in the Income Support Regulations. However, it can be distinguished from income because a capital payment is a lump sum or one off payment made without being tied to a period and not intended to form part of a series of payments.

Savings count as capital. This includes money in a bank or building society, cash at home, shares and unit trusts. Fixed term investments are taken into account unless the money is unobtainable. An investment which can be realised before the end of a term, albeit with a loss of interest, is taken into account. Money or other assets held on trust are taken into account in certain circumstances where the person has beneficial use of the money or asset. The beneficiary of a non-discretionary trust who can obtain the money or asset at any time will have this counted in full as capital.

The rules in relation to discretionary trusts are significantly different. Where payments from the trust fund can only be obtained at the discretion of trustees, the full amount is normally ignored as a capital asset. However, payments received from the trust fund are normally counted in full, either as income or capital, depending on the nature of the payment. Some payments may be disregarded in full in certain circumstances.

Trust funds from personal injury compensation are ignored as capital, although payment out of such funds may count either as income or capital depending on the nature of the payment. A person who is holding an asset or money in trust as a trustee will not have this treated as capital providing s/he has no beneficial interest in the trust.

Property and land generally come within the definition of capital but in some circumstances the value of these can be disregarded.

2.1.2 When is capital disregarded?

There is a range of circumstances where capital is ignored for the purposes of calculating entitlement to Income Support. The most relevant of these for a person entering residential care is usually when the value of the home is ignored.

2.1.2.1 The home

The term home includes the garage, garden, outbuildings, together with any land or other premises which are not occupied, but which it is unreasonable to sell separately. While a person is living in her/his own home in the community, the value of the home is ignored as a capital asset. However, when a person enters residential care permanently, s/he is no longer treated as occupying the home and treatment of the property depends on who is left in occupation.

If a partner (including any person treated as a former partner for Income Support purposes because the person claiming has gone into residential care) or a relative who is aged 60 or over or is incapacitated remains at home, the value of the house is ignored. Incapacitated is not defined, but guidance suggests that this includes people getting an incapacity or disability benefit.

If the home is put up for sale, the value of the property is ignored for six months from the date reasonable steps were taken to dispose of the property. This period can be extended where it is considered reasonable in the circumstances. However, once the home is sold, the proceeds are treated as part of the capital of the person claiming.

There are other circumstances where the value of the home is ignored, but these will rarely be relevant to a person moving into residential care.

2.1.2.2 Other capital

In particular circumstances, other capital can be ignored. This includes personal possessions unless bought in order to claim or increase entitlement to Income Support, tax rebates, arrears of a number of social security benefits (ignored for up to a year), and the surrender value of any life assurance, endowment policy or annuity.

Any interest in property which a person will or may possess in the future, but does not possess at the time of assessment, is generally ignored as capital, unless the future interest is land or premises which have been let to tenants, in which case it is taken into account.

2.1.3 Valuation of capital

Under Regulation 49 of the Income Support (General) Regulations (NI) 1987, capital is valued on the basis of its current market value or surrender value less expenses attributable to sale and any debts secured on the asset eg an outstanding mortgage.

2.1.4 Joint ownership of capital

Regulation 52 of the Income Support (General) Regulations (NI) 1987 sets out that, if a capital asset is jointly owned, each person is treated as owning an equal share of the asset until such times as the asset is sold and the person is in possession of her/his actual share. For example, two people who own a home with one having a three quarters share and the other a one quarter share are treated as having a half share each. This potentially grossly unfair rule, which applies regardless of the legal and equitable position, was designed to simplify the valuation of joint assets. The value of that half share is then relevant for the purposes of Income Support.

The value of a half share of a home was considered in the English Court of Appeal decision of *Palfrey v CAO* (The Times, 17 Feb, 1995) where one of two joint owners of a property went into residential care and the other was unwilling to vacate the property. The Court of Appeal accepted that the value of a half share in the property would be little or nothing since the prospect of finding a willing buyer would be negligible.

The government then attempted to amend the law to allow the market value of a jointly owned capital asset to be calculated as though the interest is solely owned by the person claiming and no other joint owner occupies the dwelling. However, subsequent cases overturned the amended regulations as unlawful. Therefore, the current position is that the value given to a person’s share of jointly owned property should be what a willing buyer would pay for that share of the property which may be negligible.

2.1.5 Deprivation of capital

Regulation 51 provides that a person who deliberately deprives her/himself of an asset in order to secure entitlement or increase the amount of Income Support payable will be treated as still possessing the asset, ie having notional capital. A number of narrow and specific exceptions apply which will almost never be relevant to residential care situations.

Where notional capital is assumed, a detailed formula is contained in regulation 51A for working out how the notional capital may be treated as spent (the diminishing capital rule).

The key question which determines whether this regulation should apply is that of motive: what has been the reason behind the person's decision to get rid of an asset? The onus of proof in establishing deliberate deprivation of an asset rests with the decision maker.

In *R(SB) 40/85*, a test called the significant operative purpose test was devised to determine motive. This test suggests that a subsidiary motive to obtain benefit would be sufficient to constitute deliberate deprivation. It was suggested that if obtaining Income Support was a foreseeable consequence of getting rid of assets then, in the absence of other evidence, this could be enough to establish deprivation.

This view was softened in *CIS 124/1990* where it was held that a person must actually know of the capital limits for the deprivation rules to apply. Moreover, in *R(SB) 9/91*, a commissioner held that there must be a positive intention to obtain benefit and that it was not sufficient that this was merely a natural consequence of a transfer of an asset.

In Northern Ireland, in *C 3/92(IS)*, a commissioner considered the position where a transfer of property started in 1990 but, due to complications and litigation, was not completed until some years later, by which time the person had entered a nursing home. The commissioner held that the original intention of transferring the property was relevant and that Regulation 21 did not apply.

The pitfalls of the deprivation of capital rules were illustrated in the case of *R 1/92(IS)*, a Northern Ireland case. A widow aged 84 had transferred property and savings to grandchildren. Shortly afterwards, she moved into a nursing home. Income Support was disallowed and the grandchildren put the home up for sale. The appeal tribunal found that there was deliberate deprivation of the property, but that the value of the property should be ignored while up for sale. However, the commissioner held that, while the value of a property is normally disregarded while it is up for sale, this could not apply in this case as the property was no longer owned by the widow.

This contrasts with the approach taken by commissioners in Britain where similar facts led to a decision to disregard the value of the property once the close relatives put the home up for sale.

Many attempts to protect or preserve future entitlement to Income Support run the risk of falling foul of Regulation 51. Pragmatically, the earlier the transfer, the lower the risk. Nonetheless, the legal test is one of motive for transferring property or other assets and not timing.

2.2 The income rules

If a person comes within the capital limits for Income Support purposes, the SSA will look at her/his income to ascertain what level of Income Support s/he will receive (if any). The amount of Income Support payable is calculated by subtracting a person's resources from her/his needs.

2.2.1 Calculating Income Support

The amount of Income Support a person receives depends on her/his needs, called the applicable amount, and on how much income or capital s/he has.

An applicable amount is made up of three elements: personal allowances, premiums and housing costs (owner occupiers).

2.2.1.1 Personal allowances

These are fixed amounts to cover living expenses which are uprated by the government each year. The amount paid depends on age and on whether single or in a couple.

The main personal allowances relevant to residential care are:

Status	**Age**	**Amount**
Single	under 25	£57.90
	25 and over	£73.10
Couple	both under 18	£57.90
	both over 18	£114.85

Note: For cases where one member of the couple is over eighteen and one under eighteen see *Law Centre (NI) Encyclopedia of Social Welfare Rights A.1 Income Support*.

2.2.1.2 Premiums

These are amounts paid on top of personal allowances in recognition of extra expenses arising from a person's particular circumstances eg age, disability. These notes consider those premiums most likely to be relevant to a person entering residential care.

□ Disability premium

A person is entitled to this premium if:

- s/he (but not her/his partner):
  - is under 60; and
  - has been incapable of work for 364 days or more (196 days if terminally ill); and

- evidence of incapacity has been accepted by the Department for Social Development for the purposes of a claim for Incapacity Benefit; and
- acceptable medical evidence continues to be submitted;

Note: Once the premium applies, any gap of up to 56 days where a person is no longer incapable of work is ignored.

or

- s/he or her/his partner aged under 60 is:
  - receiving Incapacity Benefit, long-term rate; or
  - receiving DLA or Constant Attendance Allowance; or
  - receiving a tax credit which includes a disability or severe disability element; or
  - receiving payments from the invalid vehicle or war pensioners' vehicle schemes; or
  - purchasing or hiring a car under the Motability scheme; or
  - registered blind.

Amount paid

Single person	£32.25
Couple	£45.95

☐ Enhanced disability premium

An enhanced disability premium is payable if the person claiming or a member of her/his family is under 60 and receiving the higher rate care component of DLA.

Amount paid

Single person	£15.75
Couple	£22.60

☐ Pensioner premium

Amount paid £122.70

☐ Severe disability premium

This premium is payable when:

- a single person is in receipt of Attendance Allowance or DLA (higher or middle rate of the care component), and no-one is receiving CA for her/him and s/he has no non-dependants aged eighteen or over at home;
- both members of a couple are in receipt of a qualifying benefit and no one gets CA for either of them.

Amount paid

Per qualifying person £61.85

If a person entering residential care has a partner and they both satisfy the rules, they will each receive the premium.

If a partner is not in receipt of Attendance Allowance or DLA (higher or middle rate care component) but is registered blind or if only one member of the couple has a carer receiving CA, one person may receive the premium.

Where one member of a couple goes into residential care, the claim is separated. If the person claiming is going into care and is getting Attendance Allowance or DLA higher/middle rate care component, s/he will qualify for a severe disability premium during the first four weeks in care. After four weeks, Attendance Allowance or DLA care component ceases and entitlement to a severe disability premium ends.

☐ Other issues

Only one premium can normally be paid on top of the personal allowance. There are exceptions to this. For example, a severe disability premium can be paid on top of a disability premium or an enhanced disability premium can be paid on top of a disability premium.

Payment of Attendance Allowance and DLA care component stops after a person has been in residential care for four weeks. Appropriate premiums attached to payment of Attendance Allowance or DLA care component also stop after four weeks.

DLA mobility component is not stopped and continues to be payable in residential care providing the person is capable of taking advantage of the benefit of outdoor journeys.

2.2.1.3 Housing costs

When a person enters residential care on a temporary or respite basis, s/he may still receive an amount in her/his Income Support in respect of her/his housing costs for her/his home in the community. However, when a person enters permanent residential care, s/he loses the entitlement to housing costs.

2.2.1.4 Income

Almost all the income which a person has is taken into account when assessing her/his eligibility for Income Support.

For a couple, both partners' income is added together when calculating entitlement unless they are no longer living in the same household, in which case each partner is treated separately.

Some benefits are counted in full as income, eg Retirement Pension and CA. Some are fully ignored eg Attendance Allowance, DLA and Social Fund payments. Some are partially disregarded eg War Widow(er)'s Pension and War Disablement Pension.

Charitable and voluntary payments, if not ignored in full, are usually partially disregarded.

Income generated from capital is generally counted as capital but in certain circumstances it is treated as income and may be ignored. Further details of what income is counted in full or in part or disregarded can be found in *Law Centre (NI) Encyclopedia of Social Welfare Rights A.1 Income Support*.

2.2.2 Case example

Ms A is 55 years of age and a widow. She receives Employment Support Allowance of £109.30, occupational pension of £25 and DLA higher rate care component. She lives alone. Her daughter suffered an accident in August 2009 and can no longer be her full-time carer. Ms A is now going into care permanently. Ms A currently lives in Housing Association accommodation and has savings of £11,200. Her entitlement to Income Support is as follows.

Entitlement for first four weeks in care

Needs

Personal allowance	£73.10
Support Component ESA	£36.20
Enhanced Disability Premium	£15.75
Severe disability premium	£61.85
Total	**£186.90**

Income

ESA	£109.30
Occupational Pension	£25.00
Tariff income from savings	£5.00
Total income	**£139.30**

Entitlement to Income Support is **£47.60**

After four weeks, Ms A loses DLA and, as a result, her severe disability premium.

Entitlement after four weeks

Needs

Personal allowance	£73.10
ESA Support component	£36.20
Total	**£109.30**

Income

ESA	£109.30
Occupational Pension	£25.00
Tariff income from savings	£5.00
Total income	**£139.30**

Ms A is no longer entitled to Income Support. Her HSC trust must now make up the shortfall between her income and her care fees.

2.2.3 Temporary or respite care and Income Support

A temporary stay in residential care is defined as one unlikely to exceed 52 weeks, or in exceptional circumstances unlikely to be substantially longer than that period, where the person intends to return to her/his home in the community and has not let or sub-let her/his home in the meantime.

There is no definition of a respite stay in social security legislation but it is generally taken to mean a planned programme of temporary stays. Respite stays are governed by the rules which apply to temporary stays.

For couples where one partner is in temporary care, Income Support is calculated and paid at the rate for two single people.

3. ATTENDANCE ALLOWANCE AND DLA

If a person who is self-funding enters a care home, whether on a temporary, respite or permanent basis, Attendance Allowance or DLA (care and mobility components) continues to be paid. This applies regardless of whether the home is an independent or trust home.

If a person who is not self-funding enters a care home and remains there for more than 28 days, Attendance Allowance or DLA care component ceases to be paid after 28 days in care although payment of DLA mobility component continues.

Care home is not defined in the regulations and is not tied to the legal definition of other settings.

Periods spent in care which are less than 28 days apart are linked and added together to count as one period in care. Once that period exceeds 28 days, entitlement to Attendance Allowance or DLA care component is lost. DLA or Attendance Allowance can be claimed during periods where a person leaves care and goes home.

See 4.7 for information on the payability of Attendance Allowance or DLA while the home is being sold, the proceeds of which will be used to pay for care costs.

PART 2. SOCIAL SERVICES

HSC trusts have a duty to charge for residential care services. Once a person has been assessed as requiring residential care, the trust will undertake a financial assessment to ascertain whether that person can pay for her/his care or whether s/he requires assistance with the care fees.

The capital and income rules which trusts apply in conducting their financial assessments are similar to those applied in determining entitlement to PC or Income Support, although there are some significant differences.

Article 99 of the Health and Personal Social Services (NI) Order 1972 (HPSS'72) places a duty on trusts to charge for accommodation in board and trust managed homes. Article 36 of HPSS'72 places a similar duty on trusts in relation to charging for accommodation in voluntary or private homes.

Articles 36(8) and 99(6) of HPSS'72 give trusts the power not to apply the full financial means test for the first eight weeks of a temporary stay in residential care. Therefore, trusts can set a standard charge for such a stay without looking at individual means. Some trusts have done this but others apply the full means test from day one.

When a trust undertakes a full financial assessment, it should be carried out in accordance with the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993 (HPSS'93 Regs), as amended, to ascertain the person's ability to pay. Guidance on charging is also contained in the *Charging for Residential Accommodation Guide (CRAG)*, which is issued by the DHSSPS and is regularly updated.

When one or both members of a couple enter residential care, a HSC trust should assess them according to their individual means, although the liability of partners to maintain their spouse may be considered (Article 100 HPSS'72).

Following the Royal Commission's report into the future funding of long-term care (March 1999), the capital limits were raised and the three month disregard of the value of the home was introduced to allow the opportunity for rehabilitation. In May 2007, the Northern Ireland Assembly voted to accept the recommendations of the Royal Commission.

A contribution of £100 towards the cost of providing nursing care was introduced from October 2002. It is available subject to certain conditions being met.

4. THE CAPITAL RULES

In order for a person to receive financial assistance from a HSC trust with care fees, s/he must have insufficient income to pay the fees and capital below the limits specified in the HPSS'93 Regs, as amended.

Currently, an individual entering residential care, whether on a temporary or a permanent basis, who has capital in excess of £23,250, will not receive any assistance from a HSC trust with care fees.

Capital of between £14,250 and £23,250 is deemed to generate a tariff income. A person falling into this category may receive assistance with care fees depending on her/his level of income.

If a person has capital of £14,250 or less and is within the income limits, s/he will be able to retain the £14,250 and not have this taken into account in her/his financial assessment.

The rules on the treatment of capital by HSC trusts are broadly similar to those applied by the SSA (see Part 1). There are some key differences, set out below.

4.1 What counts as capital?

Generally, a capital payment is a one-off or lump sum payment not made in respect of a specified period and not intended to form part of a series of payments. Capital includes property and savings in or outside the UK unless it is disregarded. Examples of capital are buildings, land, savings, stocks and shares and premium bonds.

4.2 When is capital disregarded?

4.2.1 The home

4.2.1.1 The first twelve weeks

Where a person has entered permanent residential care on or after 22 April 2002, the value of the home is disregarded for twelve weeks.

4.2.1.2 General disregard

When a person enters residential care, the value of the home must be ignored if it is occupied (and has been continuously occupied during the period immediately before the resident having been placed in residential care) by:

- a partner, former partner or civil partner (except where resident is estranged or divorced from the partner, civil partner or former partner);
- a lone parent who is the resident's estranged or divorced partner;
- a relative who is 60 or over or incapacitated;
- a child under sixteen whom the resident is liable to maintain; In addition, the HSC trust has discretion to disregard the value of property in circumstances not covered above where a third party continues to reside in the property and where it appears to be reasonable to the HSC trust to do so.

This provides a far wider power to disregard the value of the property than that contained within PC and Income Support regulations. The discretion may be exercised, for example, where a long-standing carer or family member under 60 continues to live in the person's property after her/his placement in care.

4.2.2 Other capital

Some capital assets are disregarded indefinitely eg payments in kind from a charity, or personal possessions unless they were purchased with the intention of reducing capital for the purpose of avoiding care fees.

Different types of capital may be disregarded for different periods. For example, if capital is held in a country outside the UK, the amount to be taken into account will depend on the conditions for transfer to the UK.

Some capital may be disregarded for up to 26 weeks and some may be disregarded for up to 52 weeks. Further details on capital disregards can be found in CRAG or obtained from the Community Care Legal Advice Service, Law Centre (NI).

4.3 Valuation of capital

The value of a capital asset is the current market or surrender value, whichever is higher, minus ten per cent of the value if there would be any expenses involved in selling the asset, less any outstanding debts secured on the asset, such as a mortgage. The current market value of an asset is the price a willing buyer will pay to a willing seller. Problems often arise where the asset is land or real property. These are considered below.

4.4 Joint ownership of capital (other than land or property)

Where an asset is jointly owned, all joint owners are deemed to have equal shares in the asset for the purposes of a trust's financial assessment, regardless of what each person's actual share is.

4.5 Joint ownership of land or property

Where the jointly owned asset is property or land, the situation is different from above. Trusts cannot simply deem each person to have an equal share of the land. Instead, they must look at what share of the land each person actually owns.

A person may be either a legal or a beneficial owner of land. A legal owner is the person in whose name the property is held. A beneficial owner is entitled to receive the profit or proceeds of the property. In most cases, the legal and beneficial owners of a property are the same people.

4.5.1 Legal ownership

When a person is only a legal owner of a property and has no beneficial interest in the property, ie no entitlement to receive the profits or proceeds of sale, then the value of the property is not taken into account by the trust.

4.5.2 Beneficial ownership

If a person is sole beneficial owner of a property, the value of that property is taken into account in full.

If a person is a joint beneficial owner of a property, her/his interest in the property must be valued. The value of that interest is governed by the ability to re-assign that interest to another person and there being a willing buyer for such an interest.

In most cases, the value of a beneficial interest in jointly owned property is influenced by the possibility of a fellow beneficiary purchasing the interest. If no other fellow beneficiary is willing to buy the interest, it is unlikely that an outsider would be willing to buy the property. The value of the interest could therefore be nominal or nil.

CRAG states that trusts should obtain a professional valuation where they are unsure about the value of a resident's share of property. However, Law Centre (NI) has found that some trusts are using valuations which are equivalent to half the market value of the whole property (less a ten percent deduction attributable to the costs of sale and any charge secured on the property) and which appear to be unreasonable. Attempts are currently underway to clarify this with the trusts and valuers involved.

Anyone experiencing difficulty in this area should contact the Community Care Legal Advice Service, Law Centre (NI).

4.6 Deprivation of capital

Under Regulation 25 of HPSS'93 Regs, trust staff have discretion whether to assume notional capital after deliberate deprivation of capital. This contrasts strongly with the mandatory requirement placed on the SSA (see 1.1.5 above).

While the timing of the disposal of the asset is relevant for determining who is liable for the care fees, there is no time limit beyond which deprivation cannot be considered. However, CRAG states that timing should be taken into account when considering the purpose of the disposal. It also states that it would be unreasonable for a trust to decide that a person who disposed of an asset when s/he was fit and healthy and not contemplating entering residential care did so for the purpose of reducing her/his future liability for care fees.

Where a person transfers an asset to a third party in either the six months prior to or anytime after entering residential care, the trust has the power to recover care fees from the third party. If a person transfers an asset prior to six months before going into care, the trust can seek to receive the cost of the care fees from her/him.

There have been few reported decisions on the scope of Regulation 25. Therefore, reference is generally made to those decisions which concern the meaning of Regulation 51 of the Income Support Regulations, the equivalent notional capital rule for Income Support purposes. However, two decisions on the equivalent Scottish provision to Regulation 25 are worthy of note.

In *Yule v South Lanarkshire Council (1999) 2*, Community Care Law Reports 395, decided on 12 May 1999, the Scottish Court of Session held that the true purpose of any transfer of property could be determined without a specific finding having to be reached concerning the state of knowledge or intention of the resident. This is in marked contrast to the decisions in *CIS 124/1990* and R *(SB)9/91* (see 2.1.5).

In the *Robertson v Fife Council, (2000) SLT 1226*, the court refused to find it unreasonable of the council to hold that a woman who had transferred her home to her children two and a half years before entering residential care had deprived herself of capital for the purpose of reducing liability for care fees. They were accordingly entitled to treat her as having notional capital from which she could pay the fees.

The English case of *R* on the application of the personal representatives of *Beeson v Dorset CC and the Secretary of State for Health (2002),* Community Care Law Reports 5, is useful when considering the test which a trust has to apply before coming to a decision on deliberate deprivation.

4.7 Payment of fees while home is being sold

If a property is up for sale, a HSC trust does not have the power to disregard its value, although arrangements may be made by the trust to pay the cost of care until the property is sold and its value realised.

In the past, this type of arrangement resulted in entitlement to certain benefits, eg Attendance Allowance and DLA care component, being affected even though the trust subsequently recovered any money paid out. This has now been clarified. Where the property is sold and a person repays the trust monies owed, Attendance Allowance or DLA is now in principle due for the entire period of retrospective self-funding.

The Northern Ireland Court of Appeal in *Chief Adjudication Officer v Creighton and others (2000 NILR 222)* confirmed that benefit should continue to be paid if an agreement to refund the trust is in place. The Court added that the SSA should be advised that there is an agreement to repay the money and asked not to restrict the payment of Attendance Allowance or DLA.

The English social security commissioner starred decision *79/00* confirms this point.

Note: Remember that the value of the home can now be disregarded for up to three months after a person enters permanent residential care.

5. THE INCOME RULES

Once it has been established that a person comes within the capital limits for qualifying for assistance from a trust with care fees, the trust then looks at her/his income to determine what, if any, level of assistance is required.

A trust will take into account almost all income except an allowance for personal expenses of £24.90. PC, Income Support, most other benefits including Attendance

Allowance or DLA care component and most other income are all taken into account. The regulations provide that payments made by third parties on behalf of residents, whether to trusts or directly to home owners, may now be treated as notional income. Income ignored under PC and Income Support rules, eg DLA mobility component, is normally ignored by a trust.

There is, however, one important exception. Attendance Allowance or DLA care component which is payable for only four weeks to people who enter residential accommodation on a permanent basis, although ignored for the purposes of PC or Income Support calculations, is taken into account when assessing entitlement to HSC trust assistance.

A saving disregard is applied to the savings credit element of PC of people in residential care. It is worth up to £5.00 per week for single residents and up to 10.00 per week for couples in residential care together.

Attendance Allowance or DLA care component is ignored for temporary residents.

5.1 Case example

Mrs D is 77 and, until recently, lived with her husband. She has now become so frail that she needs residential care. This option is agreed by her local HSC trust. Mrs D receives a Retirement Pension of £119.30 and Attendance Allowance of £82.30. Her husband was claiming PC for her. They have no savings.

The preferred accommodation will cost £550 a week which the trust considers reasonable for the type of care she needs. She is going into care on a permanent basis. Financial assistance payable is as follows.

- **Entitlement for first four weeks in care**

a) Pension Credit

Mrs D is treated as a single person because she is going into residential care on a permanent basis.

Guarantee credit	
Minimum guarantee single person	£155.60
Additional amount	
Severe disability addition	<u>£61.85</u>
Total	£217.45
Income	
Retirement Pension	£119.30
Entitlement to PC is	**£98.15**

As Mrs D's income is below the savings credit threshold, she has no entitlement to savings credit.

b) Social services assistance

Amount considered reasonable by trust	**£550.00**
Mrs D's income	
Retirement Pension	£119.30
Attendance Allowance	£82.30
Pension Credit	£98.15
Total	£299.75
Less personal expenses	£24.90
	£274.85
Mrs D pays	**£274.85**
HSC trust pays	**£275.15**
Mrs D keeps	**£24.90**

- **Entitlement after four weeks**

Mrs D loses her Attendance Allowance of £82.30 and her severe disability additional amount. Her entitlement to PC and assistance from the HSC trust is now as follows.

a) Pension Credit

Guarantee credit

Minimum guarantee single person	£155.60
Income	
Retirement Pension	£119.30
Entitlement to PC is	**£36.30**

b) Social services assistance

Amount considered reasonable by trust	**£550.00**
Mrs D's income	
Retirement Pension	£119.30
Pension Credit	£36.30
Total income	£155.60
Less personal expenses	£24.90

Equals	£130.70
Mrs D pays	**£130.70**
HSC trust pays	**£419.30**
Mrs D keeps	**£24.90**

Note: A savings disregard is applied to the savings credit element of PC in the financial assessment for residential accommodation. It is worth up to £5.75 for individual supported residents and £8.60 for couples.

6. CHOICE OF ACCOMMODATION

Guidance issued in 2010 by the Department of Health, Social Services and Public Safety made it clear that a HSC trust must arrange to provide care in the person's preferred accommodation:

- subject to the accommodation being available and suitable to her/his needs; and
- provided that it does not cost more than the trust would usually expect to pay for someone with such needs.

Where a person is unable to make a choice because of ill-health, the wishes of the carer should be taken into account.

Guidance sets out that the cost test is not whether a cheaper option is available but what a HSC trust would normally pay to meet a person's needs in residential care.

6.1 Third party top-up of fees

If a person chooses a more expensive option than a trust would normally pay for someone with her/his level of need, the placement can still be arranged providing a third party (eg family member or friend) is prepared to meet the difference.

The HSC trust should normally pay the full charge and recover the extra cost from the third party. If a home subsequently requests an increase to a third party payment, it should do so through the HSC trust as the contracting party. The HSC trust remains financially liable for the full cost of accommodation should the third party default on its obligations. Where a third party payment is in operation, all contracts should indicate the value of this payment and the added value service or user based preference it accounts for.

The contracting duty of the HSC trust does not end with the assessment of the resident's financial resources. The HSC trust should be actively engaged in contract management, ensuring that terms and conditions are being fulfilled, that they are consulted about any necessary changes to these terms and conditions before they happen and that the resident's needs continue to be met.

These arrangements will be subject to a review and if a person fails to pay the extra charge, the HSC trust may ask that the resident moves to less expensive accommodation. Legal advice should be sought at that stage. The person entering care is not permitted to make her/his own top-up payments although this may be open to challenge.

It has come to the attention of Law Centre (NI) that some HSC trusts are asking for third party top-ups in inappropriate cases. It should be established that the top-up is truly appropriate. It may be that the HSC trust has restricted what it considers a reasonable level of fees to less than the market cost. Anyone facing such a top-up arrangement should seek advice.

7. CASE LAW ON LONG TERM CARE CHARGES

In the case of *R v North and East Devon Health Authority ex parte Pamela Coughlan and Secretary of State for Health and Royal College of Nursing***,** decided by the Court of Appeal in England on 16 July 1999, the central issue was whether responsibility for long term care lies with the NHS or with social services.

The judgement raised several important issues but most importantly the court stated that, where a person's needs are primarily health care needs, the NHS must fund the entire cost of a placement in a nursing home. The court did not go as far as to say that all nursing care is the responsibility of the NHS. However, it did say that social services departments are only legally permitted to purchase nursing care when it is ancillary or incidental to the nursing home placement. Whether a person's needs are primarily for health care depends on the quality and quantity of nursing care required. Pamela Coughlan's needs included help with feeding, transfers from bed to wheelchair, a pressure sore mattress, occasional suppositories and intermittent catheterisation. On the basis of the Coughlan decision, they may well be entitled to free long term care.

Following this decision, the government issued guidance and directions. However, following a number of highly critical Ombudsmen's reports, new guidelines are to be issued in this area.

The (then) Northern Ireland Health and Social Services Executive (now DHSSPS) said it would await the outcome of the review taking place in England into continuing care policy, and any revised guidance issued as a result, before deciding whether or not to issue revised guidance for Northern Ireland. To date, this has not been done.

Due to the differences between community care legislation in England and Northern Ireland, it is debatable whether or not a Coughlan type challenge would be successful in Northern Ireland but it remains an option to dissatisfied service users.

8. ROYAL COMMISSION ON LONG TERM CARE

In March 1999, the Royal Commission on Long Term Care reported its proposals for the future funding of long term care.

Its main recommendation was that the costs of long term care should be split between living costs, housing costs and the costs of personal care:

- personal care should be available free, after assessment, according to need and paid for from general taxation;
- other costs should be paid by the individual according to means and with help if necessary.

Other proposals included:

- that the value of the home be disregarded for three months after going into residential or nursing care to allow the opportunity for rehabilitation;
- that the upper capital limit be raised, that changes be made to the level of tariff income; and
- that nursing care should be as free in residential care as it is everywhere else.

In England, the government did not respond to the recommendations of the Royal Commission until Autumn 2000 and the recommendations were not accepted in full. For example, personal care is not free. However, some recommendations were accepted, NHS nursing care has been free from October 2001. The value of the home is to be disregarded in financial assessments for three months. The capital limits have been raised.

In Scotland, free personal and nursing care is in place.

In Northern Ireland, the capital limits have been raised and are now £14,250 and £23,250. The value of the home is ignored for up to three months after a person enters permanent residential care. The issue of free personal care is still being considered. The government makes a contribution of £100 per week towards the nursing care costs of those who pay their own fees.

9. CONCLUSION

The rules on the financing of residential care are complex.. For further information or assistance, contact Law Centre (NI) Community Care Legal Advice Service 028 9024 4401 or 028 7126 2433.

10. FURTHER INFORMATION

Social security benefits

Welfare Benefits and Tax Credits Handbook, 18th Edition, 2016-2017, available from CPAG, 94 White Lion Street, London, N1 9PF, £61.00.

Health and Social Care Trusts' support

*Charging for Residential Accommodation Guidance***,** Departmental guidance available from DHSSPS, Castle Buildings, Stormont BT4 3SF.

Other

Community Care Assessments: *A Practical Legal Framework*, 2nd Edition, Richard Gordon QC and Nicola Mackintosh, Sweet and Maxwell 1997, £74.00.

Community Care and the Law, Luke Clements and Pauline Thompson, published by Legal Action Group, Fifth Edition, October 2011, £60.00.

Community Care Law Reports, Legal Action Group, published quarterly, 1997-2016.