



counsel + care 
for older people, their families and carers

guide

Guide 17:

Care Home Fees: Third party top-ups in England

Moving into a care home is a big step. It is important that you move into a care home which meets all of your care needs and that you have chosen to move there. This guide explains how councils in England set standard rates for how much they are prepared to pay for a care home placement. It looks at the circumstances when the council should increase its standard rate to enable you to live in the care home of your choice and when a third party, such as a relative or friend, may have to pay a 'top up' to keep you in the care home you have chosen.

The Counsel and Care advice service works with older people, their families and carers to get the best care and support. All the guides and factsheets we produce are available from our website: www.counselandcare.org.uk or paper versions can be ordered by calling 020 7241 8522. You can call our advice line on 0845 300 7585 to arrange an appointment to speak to one of our experienced advisors.



www.counselandcare.org.uk
ADVICE LINE: 0845 300 7585 (local call rate)

Your donations, legacies and payroll giving enable Counsel and Care to get the best care and support for older people, their families and carers

The Counsel and Care service is now part of Independent Age, a unique and growing charity providing information, advice and support for thousands of older people across the UK and the Republic of Ireland. Visit www.independentage.org for more information about Independent Age.

There are differences in the ways each country cares for and supports older people. The information in this guide applies essentially to England, although there may be similarities with countries in the rest of the UK.

We also produce five separate guides for both Scotland and Wales covering the needs assessment process; paying care home fees and making a formal complaint, which are the key areas where the policy and legislation differs significantly from England.

All of the guides we publish may be downloaded from www.counselandcare.org.uk/advice-and-information

or posted to you if you call our guide order line on 020 7241 8522.

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1 Moving into a care home

Living on your own or in your own home can sometimes become difficult if you have mobility difficulties, you need help with practical tasks, or you cannot manage everyday activities. If this is the case you may want to consider moving into a care home which can provide care and support to manage or overcome these problems. To begin this process, you should contact your local council social services department and request an assessment of your care needs. Social services have a duty to assess you to identify what your exact needs are. If, in this assessment, your local council agrees that you need to move into a care home, they will then assess your personal finances. You should not be asked to provide details about your financial circumstances until an assessment of your care needs has been carried out.

If you have savings or property over the value of £23,250, you will be expected to pay the full fees of the care home yourself. If you have savings or property below £23,250, your local council is responsible for the cost of your care home fees, but will assess how much you are able to pay towards the cost. The amount you will have to pay will depend on the level of your income and savings. As a general rule, all of your weekly income will be taken into account, except for £23.50 per week, which is your Personal Expenses Allowance. You will be considered to have an 'assumed income' of £1 per week for every £250 you have in savings above £14,250 and this will be included in your financial assessment.

Your financial assessment cannot include the financial details of your partner or any other family members. If the assessment form asks for your partner's details it is reasonable to withhold these, as it should be your own finances which are being assessed.

The 'liable relative' law was repealed by the Government, with effect from 6th April 2009, in section 147 of the Health and Social Care Act. If your partner is paying towards the cost of your care as a 'liable relative', you should contact an advice service, such as Counsel and Care (tel.:0845 300 7585) as this should no longer be the case. Also, see our guide:

Care Home Fees: paying them in England (guide number 16).

If your capital is below £23,250, your local council should make arrangements to ensure you are provided with the appropriate care to meet your needs and that this care is paid for by them.

Local councils are provided with guidance by central Government which they must follow when they assess your contribution towards your care home fees. This guidance is regularly updated and is issued to local councils by the Secretary of State for Health. The system for paying care home fees is explained in more detail in our guide:

Care Home Fees: paying them in England (guide number 16).

2 Choosing a care home to meet your needs

Your local council social services department should ensure you have information about care homes in their area which will meet your care needs. The Elderly Accommodation Counsel (tel.: 020 7820 1343; www.housingcare.org) and the Care Quality Commission (tel.: 03000 616161; www.cqc.org.uk) also keep details of UK care homes.

Your local council should also tell you the amount they will usually pay per week for your care in a care home. This amount is sometimes called their 'standard rate' or 'usual cost'. The care homes your local council may suggest are usually those which are the council's 'preferred providers'. These are care homes which will accept the standard rate that the local council has set. The rate that the local council will pay towards your care home fees should be based on your individual needs as stated in your care plan. You should ask for a copy of your care plan from the social worker or care manager who carries out your assessment of needs. For more information, see our guide **Assessment and services from your local council in England** (guide number 12).

Current guidance specifically warns local councils not to set an 'arbitrary ceiling' on the amount they will agree to pay. There are a number of situations where local councils should increase the amount that they usually pay depending on the type of care provided or your care needs (see section 5).

If the care home you have chosen is the only care home with a vacancy that can meet your assessed care needs, the local council should meet the higher costs incurred by increasing their standard rate.

3 Choosing a care home that you prefer

If you are council-funded you do not have to choose a care home which is on your local council's preferred list and you can choose to live in any care home that meets your assessed needs. Local councils are directed by regulations contained within LAC (2004) 20 National Assistance Act 1948 (Choice of Accommodation) Directions 1992, to ensure that you can exercise genuine choice over where you live. Your local council, therefore, has a duty to arrange for you to live in the accommodation of your choice, provided it meets four conditions:

- **'It is suitable for your individual assessed needs.'**

This means your local council will not pay for a care home that does not offer you the type of care that you need.

- **'The preferred accommodation is available.'**

This means your local council cannot arrange a place for you in your chosen care home if a room is not available, but they should be willing to consider making a temporary arrangement in another care home while you wait for a vacancy.

- **'The home will provide accommodation that satisfies the council's usual terms and conditions.'**

This means that the care home meets all the care standards set by government and the local council.

- **'The home does not cost more than the local council would expect to pay for someone with your individual assessed needs.'**

See section 4 of this guide for more details.

4 How much should the local council pay?

The amount your local council pays for your care should not depend on what they pay on average, or what they might pay for someone else with different needs. Instead, your local council should ask whether or not the care home you have chosen costs more than they would expect to pay to meet your individual assessed needs.

This should not only include your practical needs, such as washing and dressing, but also your social, emotional and psychological needs, such as the importance of maintaining relationships with family and friends. This means your local council should pay enough for you to go to the care home of your choice if there are no cheaper care homes available at the time which are suitable to meet your needs.

5 Choosing a more expensive care home

Local councils are allowed to set a rate which they will usually pay for care in local care homes. The amount that your local council sets for your care must be enough to give you a choice of suitable care homes in your area. However, if you find an alternative home which will make a contract with the council at their agreed price, you should be able to move there. Problems may arise where the fee for the care home you have chosen is more than the rate the council would normally pay for the type of individual care you need. If the care home you have chosen is more expensive than the level the council will pay, given your individual assessed needs, you may still be able to move to that care home if someone pays the difference (see section 7).

The first step, however, is to see whether your local council will increase the rate it is prepared to pay for your care. This may mean asking the council to relook at their decision, and in doing so include needs that may not have been recorded. If their rate is too low to meet your individual assessed needs, the council should offer more. It should do this if your assessed needs mean that:

- You need to move to a more expensive part of the country (see section 6).
- It costs more to look after you because of your particular individual care needs. For example, if your first language is not English, it may be reasonable for your local council to pay more for a home where your language is spoken.
- You need to live in a care home that can meet your cultural, spiritual or religious needs.
- You have specific needs, such as a hearing or visual impairment, and the care home is specifically designed to meet those needs.
- You have special dietary requirements or need specialist care.

It is important that any additional or special care needs that you have are identified in your care assessment and written in your care plan and that you are provided with a copy of this. For more information, see our guide **Assessment and services from your local council in England** (guide number 12).

If such needs have not been included as an integral part of your assessment, you may need to request a review of the assessment and care plan to ensure they are included.

It is important that you check that the amount that your local council is willing to pay is enough to fund a care home placement that meets your individual assessed needs. Your assessed needs, as stated in your care plan, include not only your physical care needs, but also your psychological, emotional and social, religious and cultural needs as well. For example, if you have lived in a small country village all your life but care homes in your village are more expensive than those in the county town and such a move would isolate you from friends and family, it may be unreasonable for a council to limit its funding to a level which would only pay for a care home in the county town. It would be appropriate for your local council to fund you in a care home in your village if it can meet all your other assessed care needs.

If you do not feel your local council is funding to a rate which allows you to choose a care home which meets your assessed needs, you should consider making a complaint (see section 10).

6 Moving to a different area

If your local council has agreed to fund you in a care home, you are free to choose a care home anywhere in England and Wales but a move to Scotland, at the time of writing, is at the local council's discretion. For example, you may wish to move to be near your family or back to the area where you were brought up. If you move outside your local council area, you will need to arrange for a cross-border placement with your local council social services. If your local council is paying your fees and you move to a different area, you will always be paid for by the council that originally assessed your needs. It is also important to make arrangements with the appropriate health authorities.

You can obtain information on care homes in different areas from the Elderly Accommodation Counsel (tel.: 020 7820 1343; www.housingcare.org) and the Care Quality Commission (tel.: 03000 616161; www.cqc.org.uk).

Care homes in some parts of the country, such as London and the South East of England, are much more expensive than in other areas. If you are moving to a more expensive area, your local council should consider increasing its funding to enable you to move to a care home in that area. It is reasonable to expect the council to pay what the council of the area you wish to move to usually pays for a care home. In order for them to do this, it is important that your reasons for moving to another area are included in your needs assessment and care plan. If they are not included, you should request a review of your care needs and make sure that your need to move to a care home in a new area is included in this and the resulting care plan.

Your local council is only obliged to pay enough to cover the cost of your care in the area you require. It is therefore important to find out the cost of care

homes in that area. You could also find out how much the local council in that area pays for care home places which it is funding. Sometimes a care home will negotiate with your local council and accept you at a lower rate. Often care homes will charge a different rate if a person is being funded by the council compared with a person who is paying their own fees. Therefore, when you are looking for a care home place, it is important to tell the care home that your fees will be the responsibility of your local council.

7 Third party top-up agreements

If you prefer a more expensive care home than the one the council has offered you, and it is able to meet your individual assessed needs, you should still be able to move there if someone will agree to pay the difference. This is called a 'third party top-up' and can be made by a friend, a relative or a charitable organisation. A third party who agrees to pay towards your care home fees will be asked by the local council to enter into a contract. When entering into a contract, the third party must be aware that the contract is between themselves and the local council, not the older person and the council. It is not possible to use your own savings to pay your own top-up, unless you have entered into a 12-week property disregard or a deferred payments agreement. For more information, see our guide:

Care Home Fees: paying them in England (guide number 16).

Your local council should not set a maximum level for their 'usual rate' that is so low that it routinely means third parties have to contribute a third party top up. Your local council should only ask for a third party top-up if the home you want to go to genuinely costs more than one they have offered that can meet your individual assessed needs. If they say the home you want to go to costs too much, they must be able to show they can meet your care needs properly in a cheaper home, and that a place is available in this home.

For example, if there were two care homes, both of which were equally well able to meet your individual assessed needs, with the first home being comfortable inside but the second home being more luxurious. Your local council has set a standard rate at £405 a week. The first care home costs £405 but the second home costs £465 a week. In this case, if you choose the second, more luxurious home, your local council would be within their

rights to ask for a third party top-up fee to cover the additional £60 a week.

If you are a relative of a resident with a shortfall between what the local council agrees to pay and the fees that the care home charge, you should not feel pressured into paying a top up fee. If you are thinking about becoming a third party to a friend or family member, it is important to make sure that the local council is paying a reasonable rate to purchase the care required.

If you do become a third party, the council has a responsibility to check that you are able to keep up the payments for as long as the resident is in the care home. A third party top-up agreement should be between the third party and the local council, not between the third party and the care home. This arrangement gives you more protection.

Before you sign any contract with the council, the social worker should explain clearly about what will happen when the fees increase. You should also be aware that if you are unable to keep up your payments, then the resident may have to move to a cheaper care home.

The Government guidance 'Charging for Residential Accommodation Guide' (CRAG) states that all parties (including the resident and the care home manager) must agree if a resident and third party are to pay their contributions directly to the care home. If you do not agree with this arrangement, the council should meet the full cost of the care home fees and invoice the resident for their contribution and the third party for any top-up separately. The guidance also states that even where there is an agreement for the resident to make payments directly to the care home, the council continues to be liable to pay for the full cost of the care home fees should either the resident or the third party fail to pay the required amount.

8 Moving to a cheaper care home

If you are moving from a care home which you had previously paid for yourself into a care home which the local council is contributing to or paying for, you have a number of entitlements. The local council must be able to demonstrate that the home you are moving to can meet all of your individual assessed needs.

8.1 Single Assessment Process (SAP)

When you move from one care home to another, you should receive one assessment, involving professionals from both health and social care, which takes into account your differing needs. This means that you will only have to answer questions once and that your identified needs in all areas are taken into account on the same care plan. You can have a family member, a friend, or an independent advocate with you at the assessment if you wish. If you have no family, close friend or representative and you lack mental capacity to make a decision about serious medical treatment or an accommodation move, you have a right to an Independent Mental Capacity Advocate (IMCA) from the local council social services department. IMCAs may also be involved if it is felt that you would benefit from independent support in safeguarding (adult protection) proceedings. For more information about advocacy, see our guide:

Independent Advocacy (guide number 25).

The assessment will take into account your personal, social, environmental and psychological needs, and it must be demonstrated that the care home you are moving to can meet all of these needs. If it can't meet your needs, and the local council are considering moving you, you may wish to consider

challenging their decision using their complaints procedure (see section 10 of this guide).

A risk assessment can also be carried out under the SAP to determine if it is detrimental to your physical, social, or mental wellbeing to be moved from your current care home. This may be assessed jointly by social services, the GP, or a psychogeriatrician (depending on the professionals involved), outlining their professional opinions about the effect of moving you to another care home, which should be taken into account in any decision making. If social services agree that it is part of your assessed needs to remain in that home, they should increase the 'usual rate' to pay for the full cost of the placement.

9 Paying your own fees

If you have savings or property over the value of £23,250 you will be expected to pay the full cost of your care home fees. You can arrange this care in a care home without any involvement with the local council social services. However, you do have the right to an individual assessment of your care needs, regardless of your financial situation. You can also receive support and assistance from the local council in finding a suitable care home if you cannot make arrangements yourself or have no-one else to do it for you. Even if you do make arrangements yourself, the council should still give you advice on the type of care you need and its availability.

Of course, if you have sufficient resources, you are free to choose a care home at any price but care home fees are expensive and, if you live in a care home for a number of years, your savings may soon be reduced to the upper capital limit of £23,250. When they do reduce to this limit, you will be eligible to apply for financial assistance from the local council towards the cost of your care home place. You should inform the local council where the care home is situated at least two months before your savings drop to just above this level (see section 11 of this guide).

At the point that the council has been notified that your capital is approaching the upper capital threshold, they should act within a reasonable time in terms of taking over the funding and conducting the necessary assessments. If the local council has allowed your capital to drop below £23,250, you may be entitled to a reimbursement. A reimbursement will only be paid if you, or the person managing your financial affairs, notified the council before your capital dropped below £23,250. Therefore the council are only liable from the point that contact was made.

If the care home you have chosen costs more than the local council will usually pay for someone with your individual assessed needs, and the council will not agree to pay more, they may ask you to move to a less expensive home or ask you to arrange for a third party to meet the shortfall. If it is possible that you will at some point have to rely on local council help towards your care home fees, you may wish to try to move into a care home that will accept the local council's 'usual rate' and make sure that the local council assesses your needs and, if possible, arranges your place.

If you have capital in a property and would like advice about the best way in which to invest this to pay for care home fees, it is important that you seek such advice from a regulated independent financial adviser. You may wish to contact organisations such as Saga Care Funding advice service (tel.: 0800 096 8703; www.saga.co.uk/money-shop/care-funding) Paying for Care (www.payingforcare.co.uk) or Eldercare Solutions (tel.: 01707 368 945; www.eldercare-solutions.co.uk). They are able to give information about insurance schemes available to help invest money for your care home fees.

The Financial Services Authority (tel.: 020 7066 1000; www.fsa.gov.uk) regulates the financial sector, so you may wish to contact them if you have any concerns about the services provided.

10 Ordinary residence

Ordinary Residency rules are applicable when local councils want to identify whether a person in their area has a right to access public funding from them to help pay for their care. As such, the local council will wish to take into account factors such as time, intention and continuity when deciding if their area should be treated as the person's settled residence, which will entitle them to funding. In doing so, it is clear that local councils should not delay in carrying out an assessment (for those who appear or are in need of community care services) and in providing services. It is the responsibility of the local council of the moment to provide any care required to meet the person's needs, especially if services are urgently required. If there is a dispute about the ordinary residence of a person in need of services, it should be debated between the councils (this does not include the person in need) after a needs assessment has been carried out and any provision of service has begun.

If you previously arranged to go into a care home permanently in a new area, without any local council having taken responsibility for the arrangements, you will usually become ordinarily resident in the new area. Therefore, you will need to approach the local council where the care home is situated for an assessment and funding.

Where, following an assessment, a local council arranges a placement in a private or voluntary care home in another local council's area, or in a care home provided by another local council, the 'placing' council will normally be responsible. The placing council will continue to retain the same responsibility for the person's care that it has for someone living in its own area.

Where disputes cannot be resolved locally, this must be referred to the Secretary of State, but only as a last resort. The 2010 revised guidance (Ordinary residence: guidance on the identification of the ordinary residence of people in need of community care services in England), ensures that local councils are better equipped to resolve disputes at a local level and that people who use services are not caught up in long-running disputes about which council is responsible for their care. The Department of Health has published a series of anonymised ordinary residence determinations to help provide an insight into how it arrives at these decisions. You can view these examples or the revised guidance at:

www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/Ordinaryresidence/index.htm

11 Challenging decisions made by the local council

If your local council is not prepared to fund your stay in the care home of your choice, despite your decision being based not only on preference, you may want to consider challenging the decision using their complaints procedure. Your first step is to try to resolve the matter informally. Explain why you need to move to, or remain in, a particular care home and why you feel this particular care home is the only one that can meet your needs. Make sure that this information is included in your care plan and explain why you feel your local council should pay for this care. You may need to remind your local council of its responsibilities under the LAC (2004)20 National Assistance Act 1948 (Choice of Accommodation) Directions 1992.

You can contact an advice service, such as Counsel and Care (tel.: 0845 300 7585; www.counselandcare.org.uk) to discuss your options further.

If you cannot resolve matters at an informal level, you may need to make a formal complaint. For more information, see our guide:

Complaints about community care and NHS services in England (guide number 18).

This guide is not a full explanation of the law and is aimed at people aged over 60.

The Counsel and Care service is now part of Independent Age. Independent Age is the operating name of the Royal United Kingdom Beneficent Association.

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