



counsel + care 
for older people, their families and carers

guide

Information from Counsel and Care: 73

Care Home Fees: third party top ups in Wales

Moving into a care home is a big step. It is important that if the local council arranges a place for you that it is in a care home which meets all of your needs. It is also important that you can choose the care home where you want to live.

This guide explains your right to choose the care home you move into and what local councils should agree to pay if you are eligible for council funding. (For an explanation of how to pay for care in a care home, please see our guide **Care Home Fees: paying them in Wales** - guide 72).

Counsel and Care is the national charity working with older people, their families and carers to get the best care and support. If you have found our service helpful, please consider making a donation or leaving a legacy in your Will. You can arrange either by telephoning 020 7241 8555 or using the secure service on our website www.counselandcare.org.uk.



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

Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland Assemblies means there are differences in the ways each region cares for and supports older people. The information in this guide applies essentially to Wales, although there may be similarities with England, Scotland and Northern Ireland.

We produce a large range of guides which apply to all areas of the United Kingdom. They can be downloaded from www.counselandcare.org.uk/helping-you/guides or posted to you by calling our guide orderline on 020 7241 8522.

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1 Moving into a care home

Living on your own in your own home can sometimes become difficult if you have mobility difficulties, you need help with practical things, or you are lonely. 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 do need to move into a care home, they will then assess your personal finances.

If you have savings or property over the value of £22,000, you will be expected to pay the fees of the care home yourself. This guide will only be relevant to you if you have capital under £22,000, or your savings are likely to decrease to that level shortly. If you have savings or property below £22,000, your local council is responsible for the full 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 levels of your income and savings. As a general rule, all of your weekly income will be taken into account, except for £22.50 per week, which is your Personal Expenses Allowance.

Your financial assessment cannot include the financial details of your spouse, civil partner, partner or any other family members. If the form asks for any of these person's details it is reasonable to withhold these, as

it should be **your own** finances which are being assessed. If your capital is below £22,000 and your income is low, 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 with a contribution from your income.

The 'liable relative' law was repealed by the Government in 2008 through 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.

Local councils are provided with guidance by central government which they must follow when they assess your contribution towards the care home fees. This guidance is regularly updated and is issued to local authorities by the Secretary of State for Health. The system for paying the fees of a care home is explained in more detail in our guide **Care Home Fees: paying them in Wales** - guide number 72.

2 Choosing a care home to meet your needs

Your local council social services department should make sure you have information about homes in their area which will meet your care needs. The Elderly Accommodation Counsel (tel.: 020 7820 1343; www.housingcare.org) and the Care and Social Services Inspectorate Wales (CSSIW) (tel.: 01443 848 450; www.cssiw.org.uk), also keep details of care homes in Wales. 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 the standard rate or the 'usual cost'. The care homes your local council may suggest are usually those which are the council's 'preferred providers'. These are homes which will accept the standard rate that the council social services department have set. However, the rate that the local council will pay towards your care home fees should be based on your individual needs as agreed and written in your care plan. (You should be given a copy of your care plan by the social worker or care manager who carries out your assessment of need. For more information, see our guide Assessment and services from your local council in Wales – guide number 70.)

The guidance specifically warns local councils not to set an 'arbitrary ceiling' on the amount they will agree to pay. Local councils have the discretion to increase the amount they usually pay if the home you have chosen is the only home with a vacancy that can meet your assessed care needs (please see section 5 of this guide for more information).

3 Choosing a care home that you prefer

You do not have to choose a care home which is on your local council's list, and if you are council-funded you can choose to live in any other care home that meets your needs. Local councils are directed by legislation to ensure that you can exercise genuine choice over where you live. Your local council, therefore, has a duty to arrange a place in the accommodation of your choice, provided it meets four conditions:

- **'The accommodation is suitable in relation to the individual's assessed needs.'**

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

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

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

- **'The person in charge of the accommodation is willing to provide accommodation subject to the local authority's usual terms and conditions.'**

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

- **'To do so would not cost the local authority more than it would usually expect to pay for accommodation for someone with the individual's assessed needs.'** (See section 4 of this guide for more information.)

These regulations are contained within the Guidance on the National

Assistance Act 1948 (Choice of Accommodation) Directions 1993.

4 How much should the local council pay?

If you are eligible for council funding, 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 home you choose costs more than they would expect to pay to meet **your individual needs**. These should include social, emotional and psychological care needs, such as the importance of maintaining relationships with family and friends and those friendships built up with other residents in a care home. This means your local council should pay enough for you to go to the home of your choice if there are no cheaper homes available at the time, and which are suitable to meet your needs.

5 Choosing a more expensive care home

Local councils are allowed to set a standard rate which they will 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 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 home you have chosen is more than the rate the council would normally pay for the type of individual care you need. If the 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 home if somebody pays the difference (see section 6 of this guide).

The first step, however, is to see whether your local council will increase the rate it is prepared to pay for your care. If the 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 8 of this guide); or
- 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. Similarly, if you are blind or visually impaired it may be reasonable for your local council to pay more for a specialist home for blind and visually impaired people; or
- You wish to be cared for in a care home that can fully meet your

cultural, spiritual or religious needs.

It is important that any 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 Wales** – guide number 70. 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 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, and care homes in your village are more expensive than those in the county town, but 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 of this guide).

6 Third party top-up agreements

If you are eligible for council funding and you **prefer** a more expensive 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 or relative. 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**, other than during the initial 12-week disregard period of your property (if you have your own property) or if you have entered into a deferred payments agreement (If you are funding your place in a care home yourself, please see our guide **Care Home Fees: paying them in Wales** – guide number 72 - for more details).

Your local council should not set a maximum level for their 'usual rate' that routinely means third parties have to contribute towards the care home fees. 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 needs properly in a cheaper home, and that a placement in this home is available.

An example of this would be if there were two care homes, both of

which were equally well able to meet your individual assessed needs, the first home was comfortable and homely inside, but the second home was more luxurious. Your local council has set a standard rate at £305. The first care home costs £305 but the second home costs £365 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 agree to pay and the fees that the care home charge, you should not feel pressurised into entering into a commitment to top-up the difference. You should not be asked to contribute a third party top-up unless you have signed a contract. If you are thinking about becoming a third party to a friend or family member, it is important to check that the local council is funding at 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 unless you agree to this. This arrangement gives you more protection.

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

The Government guidance Charging for Residential Accommodation Guide (CRAG), states that all parties (that is, both the resident and the care home manager) must agree for a resident and third party to pay their contribution directly to the care home. If you do not agree with this arrangement the council should meet the full cost 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 direct to the accommodation, the council continues to be liable to pay for the full cost of the accommodation should either the resident or third party fail to pay the required amount.

Before signing an agreement to become a third party, it may be worth consulting an advice agency like Counsel and Care.

7 Moving to a cheaper care home

If you are moving from a care home which you 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 into can meet all of your individual assessed needs.

7.1 Unified Assessment

When you move from one care home to another you should receive one assessment which takes into account your differing needs, and health professionals from both health and social care should be involved in this assessment. This means that you will only have to answer questions once, and that your identified needs in all areas of your life are taken into account on the same care plan. You can have a member of your family, a friend, or an independent advocate with you at the assessment if you wish. If a resident has no family, close friend or representative and they lack mental capacity to make a decision about serious medical treatment or an accommodation move, they 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 the person would benefit from independent support in safeguarding (adult protection) proceedings. (For more information about independent 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, 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 should also to be carried out within a Unified Assessment under the 'Creating a Unified and Fair System for Assessing and Managing Care' guidance, to determine if it is detrimental to the older person's physical or mental wellbeing to be moved from the current care home. This may be assessed jointly by the GP and a psychogeriatrician outlining their professional opinion about the effect of any move to another home on the older person which should be taken into account in any decision. If social services agree that it is part of the older persons assessed needs to remain in that home, they should increase the usual fee to pay for the full cost of the placement.

8 Moving to a different area

When your local council has agreed to fund you in a care home you are free to choose a home anywhere in Wales, England, or Scotland. 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 to another country within the United Kingdom 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.

You can obtain information on care homes in different areas from the Elderly Accommodation Counsel (tel.: 020 7820 1343; www.housingcare.org) or the Care and Social Services Inspectorate Wales (CSSIW) (tel.: 01443 848 450; www.cssiw.org.uk). In some parts of the country, you may find that care homes are much more expensive than in other areas, for example, in Wales, homes in Cardiff and the South East of Wales are often more expensive. Whereas, care homes in London and the south-east of England can be more expensive, for example. If you are moving to a more expensive area your local council should consider increasing their funding to enable you to move to a home in that area. It is reasonable to expect them to pay what the social services of the area you wish to move usually pay 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 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 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 the care you need 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 places which it is funding.

Sometimes a care home will negotiate with your local council and accept you at a lesser rate. Often care homes will charge a different rate if a person is being paid for by the council compared with a person who is paying his/her 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.

If you require a nursing care home placement and wish to move outside of Wales, then although it will be your present local council who will remain responsible for paying towards your care home fees if you are financially eligible for help, it will be the health authority that you move to who will be responsible for contributing towards your nursing care. Your nursing care payment will be altered to reflect the local scheme, so that instead of the care home receiving a rate set by the Welsh local health board, you will be assessed for NHS-funded nursing care in the area you move to in England. This means you may find out how much of your care home fees your local authority will be responsible for and how much the NHS in the area you will be moving to will be responsible for.

You can obtain information on care homes in different areas from the

Elderly Accommodation Counsel (tel.: 020 7820 1343;

www.housingcare.org)

Care Quality Commission (CQC) (for English care homes) (tel.: 03000 616

161; www.cqc.org.uk)

Scottish Commission for the Regulation of Care (SCRC) (for Scottish care

homes) (tel.: 0845 603 0890; www.carecommission.com)

Care and Social Services Inspectorate Wales (CSSIW) (for Welsh care

homes) (tel.: 01443 848 450; www.cssiw.org.uk)

9 Paying your own fees

If you have savings or property over the value of £22,000 you will be expected to pay the full cost of your care home fees yourself. 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 have 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 home if you cannot make arrangements yourself or have no-one 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 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 £22,000. 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, as soon as your savings drop to just above this level.

At the point that the council has been notified that your capital has dropped down 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 £22,000, 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 £22,000. Therefore the council is only liable from the point that contact was made.

If the 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 home fees, you may wish to try to move into a care home that meets all your needs **and** that will accept the local council's 'usual cost' 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 ways to invest this to pay for care home fees, there are several agencies that can advise about the financial products on the market to help people invest money to pay for future care home fees. As with any financial 'product', different products will suit different people's circumstances, so you may want to seek advice and opinions from a range of organisations and/or advisers before making a financial commitment. For more information, please see the section called "Seeking advice about care fee planning" in our guide Care Home Fees: paying them in Wales – guide 72.

10 Challenging decisions made by the local council

If your local council is not prepared to fund your care in the home of your choice, despite your decision being based not only on preference but your assessed care needs, 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 home is the only one that can meet your individual care 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 Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1993.

You could also contact an organisation, such as Counsel and Care (tel.: 0845 300 7585; www.counselandcare.org.uk) to advise you. 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 Wales** – guide number 74.

11 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. When the council decides if their area should be treated as the person's settled residence, the local council will take into account factors like how long a person has lived in the area, whether they intend to stay in the area and whether they have continuity in how long they've lived there. Local councils should not delay carrying out an assessment (for those who appear to be, or are, in need of community care services) and providing services. It is the responsibility of the local council to provide any care required to meet a person's needs living in their area, provided they fall within council's eligibility criteria, especially if services are urgently required. Although the council may be reimbursed for its costs should the person be considered an ordinary resident of another area, 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 and any provision of service has been carried out.

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 home in another local council's area, or in a 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, then the disputing councils should refer the matter back to the National Assembly for Wales, but only as a last resort.

Our advice workers can advise on a wide range of issues affecting older people, their relatives and carers. Counsel and Care produce a range of guides which can be downloaded from our website www.counselandcare.org.uk, or requested by calling our guide orderline on 020 7241 8522.

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

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