



counsel + care 
for older people, their families and carers

guide

Information from Counsel and Care: 53

Care Home Fees: Third party top-ups in Scotland

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 Scotland 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.

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 visiting 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 country of the UK cares for and supports older people. The information in this guide applies essentially to Scotland although there may be similarities with England, Wales and Northern Ireland.

We produce a large range of guides. They can be downloaded from www.counselandcare.org.uk/advice-and-information or posted to you by calling our guide orderline on 020 7241 8522.

This guide has the following sections:

1	Moving into a care home.....	4
2	Choosing a care home to meet your needs.....	6
3	Choosing a care home that you prefer.....	7
4	How much should the local council pay?.....	9
5	Choosing a more expensive care home.....	10
6	Third party top-up agreements.....	12
7	Moving to a cheaper care home.....	15
8	Moving to a different area.....	16
9	Paying your own fees.....	18
9.1	If your funds reduce.....	19
10	Challenging decisions made by the local council.....	20

1 Moving into a care home

Living on your own or in your own home can sometimes become difficult if you have mobility difficulties or you need help with practical tasks, such as washing and dressing. If you are considering moving to a care home as it could better meet your care needs, you may want to begin the process by contacting your local council social work department and requesting a needs assessment. The social work department has a duty to assess you to identify what your exact care needs are if you 'appear' to be in need of services. For more information, see our guide:

Assessment and services from your local council in Scotland (guide number 50).

If you move into a care home without contacting the council, the council may refuse to contribute to your care home fees, including your 'free' personal or nursing care, until they have assessed that your care needs meet their eligibility criteria. Therefore, if the social work department has not already assessed you as needing to move to a care home, it is important to contact them for a needs assessment. Their contact details will be in the phone book under the name of your council or on the council website.

If you have savings or property worth over £23,500 you will be expected to pay the full fees of your chosen care home, until you reach the upper capital limit of £23,500. If you have savings or property below £23,500, your local council is responsible for the full cost of your care home fees, but they 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, most of your weekly income will be taken into account, except for a Personal Expenses Allowance of £22.60 per week.

You will be considered to have an 'assumed or tariff income' of £1 per week for every £250 you have in savings between £14,500 (lower capital limit) and £23,500 (upper capital limit). This tariff income will be included in your financial assessment until you reach the lower limit when your savings should be ignored but you will continue to pay from your income.

Your financial assessment cannot include the financial details of your spouse or partner or any other family members. If the assessment form asks for your spouse or partner's details, it is reasonable to withhold these, as it should be your own finances which are being assessed. Your local council should not ask your spouse or partner to contribute towards your care home fees as section 62 of the Adult Support and Protection (Scotland) Act 2007 removed the 'liable relatives' rule. For more information about the financial assessment for your care home placement, see our guide: **Care Home Fees: paying them in Scotland** (guide number 52).

2 Choosing a care home to meet your needs

Your local council social work department should ensure you have information about care homes in their area which will meet your care needs.

Social Care and Social Work Improvement Scotland (SCSWIS) (tel.: 0845 600 9527; www.scswis.com) and the Elderly Accommodation Counsel (tel.: 0207 820 1343; www.housingcare.org) also have this information. Your local council should also tell you the amount they will usually pay for your care in a care home. This amount is 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. However, the rate that the local council will pay towards your care home fees should be based on your individual care needs in your care plan. You should be given a copy of your care plan following your needs assessment if you are eligible for council support. For more information about care plans, see our guide:

Assessment and services from your local council in Scotland (guide number 50).

The Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993 specifically tells local councils not to set an 'arbitrary ceiling' on the amount they will agree to pay for a care home placement. Local councils have a duty to increase the amount they usually pay in certain situations, for example, if the care home that you have chosen is the only care home with a vacancy that can meet your assessed care needs (see section 5).

3 Choosing a care home that you prefer

If you are self-funding as you have capital/savings over £23,500, you can move to any care home you choose, provided it can meet your care needs and has a placement that the care home can offer you.

If you are now (or later become) funded by the local council because your capital/savings decrease to below £23,500, and you have eligible care needs, you are not limited to care homes on your local council's list; you can choose to live in any care home (within certain funding limitations as described in the 1993 Directions and below).

There are specific guidelines for choice of accommodation when moving from hospital to a care home (although the guidance does not change the financial assessment process) so you may want to see our guide:

Hospital care in Scotland: what you need to know before, during and after your stay (guide number 51).

Local councils should 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 that:

- There is a place available
- The social work department agrees that the care home can meet your assessed care needs
- The social work department and the care home owner can agree a contract
- The care home you have chosen will not cost more than the council would usually expect to pay for a care home providing the sort of care

you need.

You are able to choose a care home that you prefer, but if it costs more than the local council's usual or standard rate, you may be asked to find a third party top-up contribution. This could be provided by a member of your family, a friend, a charity or benevolent fund.

Whether the council can ask or should not ask for a third party top up is examined more fully in sections 4 and 5 of this guide.

4 How much should the local council pay?

If you are part-funded by your local council, the amount the council pays for your care should not depend on what they pay on average, or what they might pay for someone else with different care needs. Instead, your local council should ask whether or not the care home you choose costs more than they would expect to pay to meet your individual care needs. These care needs should include your social, emotional and psychological needs, such as the importance of maintaining relationships and contact with family and friends or maintaining the social and caring relationships built up in a care home over time. These care needs should be explicit in your care plan as the council has a duty to meet your eligible care needs as set out in your care plan. This means your local council should pay enough for you to stay in the care home of your choice if that care home meets your assessed care needs and there are no cheaper care homes available at the time which can also meet all your assessed care needs. In other words, the council has a duty to meet individual assessed care needs, not individual preferences.

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 care homes in their area. If you find an alternative care home to those offered by the council, 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 higher than the rate the local council would normally pay for the type of care you need. If the care home you have chosen is more expensive than the level the local council will pay, given your individual assessed care needs, you may still be able to move to that care home if somebody else pays the difference (see section 6).

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 council's standard rate is too low to meet your individual assessed care needs, the council should increase it. It should do this if your assessed care needs mean that:

- You need to move to or stay in a more expensive part of the country to maintain family contact (see section 7); or
- It costs more to look after you because of your particular individual care needs. For example, if you are blind it may be reasonable for your local council to pay more for a specialist home for people with sensory impairments which is more expensive; or
- You wish to move to a care home that can fully meet your spiritual or religious needs.

It is important that any special care needs that you have are identified in

your needs assessment and written explicitly on your care plan and that you are provided with a copy of this care plan. If your care 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. For more information about assessments, see our guide:

Assessment and services from your local council in Scotland (guide number 50).

Your assessed needs as stated in your care plan include not only your physical care needs, but also your psychological, emotional, 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 your friends and family because it is a considerable distance away, it may be unreasonable for the 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 to meet all your 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 all of your assessed care needs, you should consider making a complaint (see section 10).

6 Third party top-up agreements

If you prefer a more expensive care home than the one the local 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 charity. A third party who agrees to pay towards your care home fees may be asked by the local council to enter into a contract.

You cannot pay your own third party top up in a care home from your disregarded capital (savings under £23,500) except in specific circumstances. Both the Charging for Residential Accommodation Guide (CRAG) and guidance CCD6/2002, are clear that you *are* able to use any disregarded income and savings to pay your own top-up if you have entered into a 12 week property disregard or deferred payment agreement.

Your local council should not set a maximum level for their standard rate that routinely means 'third parties' have to contribute towards care home fees. Your local council should only ask for a third party top-up if the care home you want to go to genuinely costs more than one they have offered which is available now and can meet your individual assessed needs. If the care home you want to go to costs more than the council's standard rate, the council must be able to show they can meet all of your needs in a cheaper home and that a placement is currently available in this home, not on a future date.

An example of this would be, if there were two care homes, both of which are equally well able to meet your individual assessed needs but the first care home is more comfortable and homely inside than the second care

home. Your local council has set a standard rate of £505. The first care home costs £565 and the second care home costs £505 a week. If you were to choose the first care 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, unless you can show why the cheaper care home cannot meet your individual assessed care needs.

If you are a relative of a resident with a shortfall between what the local council agrees to pay and the fee that the care home charges, 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, you may have to show that you are likely to be able to keep up the payments for as long as the resident is in the care home. A third party top-up agreement should routinely be between the third party and the local council, not between the third party and the care home.

Before you sign a contract with the local council, the social worker should explain clearly what would happen when the fee increases (the third party top-up may increase too). You should also be aware that if you are unable to keep paying your third party top-up, the resident may have to move to a cheaper care home, if one is available, that also meets their care needs (although in the short-term, the council will be responsible for meeting the cost of the current care home placement in full as set out in the 1993 Choice of Accommodation Directions).

If you sign a third party top-up agreement (or agree to provide a third party top-up), it may be advisable to organise it so that the care home owner invoices the local council for all of the care home fees and that your third party top-up and any assessed contribution of the older person is paid directly to the council. This is because if you are unable to keep up the third party top-up payments, the council has responsibility for the fees in full at that point, meaning that the care home will still be paid in full, though the older person may be asked to move if there is a cheaper care home available that meets all their assessed care needs.

The local council may be reluctant to make this arrangement, saying they prefer the assessed contribution to be paid directly to the care home. However, as allowed for in CRAG, the local council should normally make arrangements to pay the care home in full and invoice the older person (or their representative) for the older person's assessed financial contribution. The assessed contribution and any third party top-up should only be paid directly to the care home if this is agreed by all those involved, including you.

Before signing a third party top-up agreement, it may be worth talking to an independent advice organisation, such as Counsel and Care (tel.: 0845 300 7585; advice@counselandcare.org.uk).

7 Moving to a cheaper care home

If your capital/savings reduce to the upper capital limit (£23,500) and you are asked to move from a care home which you paid for yourself to a care home which the local council is contributing to, perhaps because there is not a third party able to pay the necessary top-up fee, the council must be able to demonstrate that the care home you are moving to can meet all of your assessed needs as set out in your care plan. If it cannot meet all of your assessed needs, the council should increase what it pays to keep you in your present care home or contribute to the cost of another care home that does meet all of your care needs.

If it is proposed by the council that you move from one care home to another, you should receive a needs assessment or re-assessment. You can have a relative, friend, or advocate with you at the assessment if you wish. For more information about the needs assessment, see our guide: **Assessment and Services from your Local Council in Scotland** (guide number 50).

A risk assessment should also be carried out under the single shared assessment process to determine if it is detrimental to your physical, social or mental wellbeing if you are moved from your current care home. This may be assessed jointly by your GP and a psychogeriatrician (a psychiatrist that works with older people). In some cases, if you are extremely frail or ill, it may put you at risk if you are moved from one care home to another. If this is assessed as being the case and your current care home is still able to meet your assessed needs, the council should increase the amount they pay towards your fees as it is a need to stay there, not a preference.

8 Moving to a different area

When your local council is already funding you, or has agreed to fund you in a care home, you are free to choose a care home anywhere in Scotland that meets your assessed care needs as set out in your care plan, within certain funding constraints. The council can also fund a care home in England or Wales by special arrangements covered by guidance on cross-border moves in SWSG6/94 and new guidance on ordinary residence and reimbursement of care fees under sections 86 and 97 of the Social Work Scotland Act 1968 for the provision of social services (CCD3/2010).

You may want to ensure that your care plan explicitly states what your care needs are, including your social and psychological care needs. For example, you may wish to move to another area of the country to be near your family or back to the area where you were brought up. If you want to move across the border to England or Wales, or you want to move to another area of Scotland, you will need to arrange this with your local council social work department via a needs assessment or re-assessment.

If your local council is paying, or has agreed to pay your care home fees, and it is agreed that you will move to a different area to meet your assessed care needs in your care plan, the contribution towards the fees from the original council will usually continue. This applies to people who are moving from Scotland to England or Wales or from England or Wales to Scotland (which is governed by separate guidance). The two councils must liaise with one another to arrange your care in the new area, with the original council usually reimbursing the new council which makes the arrangements and contracts with the care home.

You can obtain information about care homes all over the UK from the

Elderly Accommodation Counsel (tel.: 0207 820 1343; www.housingcare.org) or SCSWIS (tel.: 0845 600 9527; www.scswis.com) if the care home is in Scotland, the Care Quality Commission (tel.: 03000 616161; www.cqc.org.uk) if the care home is in England or the Care and Social Services Inspectorate for Wales (their website www.cssiw.org.uk has an online directory and the contact details for their four regional offices) if the care home is in Wales.

In some parts of the country, care homes are more expensive than in other areas. The funding (original) council can have reference to its own standard rate (and that of the new area) when contributing to the cost of your care home fees. However, the council cannot set an arbitrary rate. If it is not possible to meet your care needs in the new area, at the funding council standard rate, the council should increase the rate it pays so that all your assessed care needs can be met in an appropriate placement - which may be at the care home closest to the funding council's standard rate, if it is suitable to meet all your care needs as set out in your care plan.

Whilst you are at liberty to try and identify a suitable care home placement for yourself in a new area, (and in doing so you may want to ask your local council and the new council how much they 'usually' pay for a care home placement for someone with your level of care needs), it is the funding council's responsibility to show that your care needs can be met at the standard rate it is offering. They cannot offer an arbitrary rate and ask you to find a care home irrespective of whether any care homes in the new area accept that rate. They should only offer an amount that they know will meet all your assessed care needs in a suitable care home.

9 Paying your own fees

In Scotland, if you are moving to or are already living in a care home, you may receive 'free' personal and nursing care payments (if you have been assessed for this by the council and the council has agreed a contract with the care home for these payments) towards the cost of your care home fees, whether you are self-funded or council-funded. The payment will usually only benefit you financially if you are self-funded, as otherwise the payment will be used to reduce the council's contribution to your care fees. The personal care payment is £159 per week and, if you have been assessed as needing nursing care, you will receive an additional £72 per week, so that the total contribution will be £231 per week. In order to receive these contributions towards the cost of your care home fees, you have to have been assessed by the social work department.

If you decide to receive the 'free' personal care contribution from the social work department for a care home placement, regardless of whether you are council-funded or self-funded, you will no longer be eligible to receive Attendance Allowance, or the care component of Disability Living Allowance, after 28 days. Where there are changes in your circumstances, you must inform the disability benefits office (tel.: 08457 123 457) as soon as possible.

If you have savings/capital above £23,500, you have to pay your hotel and accommodation costs in full (the costs not covered by 'free' personal and nursing care). If you have savings/capital below £23,500, your fees should normally be paid in full by the local council and you then pay an assessed contribution to the council from your income towards your hotel and accommodation costs.

For an explanation of the contract routes for 'free' personal and nursing care and the wider financial assessment process for a care home placement, please see our guide:

Care home fees: paying them in Scotland (guide number 52).

9.1 If your funds reduce

If you are in a care home and your capital reduces to the upper capital limit of £23,500, you will be eligible to apply for financial assistance from your local council. You will receive financial help towards the cost of your hotel and accommodation costs, if your income is less than the cost of the hotel/accommodation fees, as well as any 'free' personal and nursing care payments you are already receiving. However, when you become council-funded, your 'free' personal and nursing care payments will stop benefiting you financially, as this amount will be deducted from the council's contribution to your fees and you will still pay from your income.

You should inform your local council as soon as your savings are close to reaching the upper threshold of £23,500. The local council should then carry out a needs assessment or re-assessment and make the necessary arrangements, without undue delay, to contribute towards these costs if you have eligible care needs. If they fail to do so, they may be liable to reimburse you if you are forced to use capital under £23,500 to pay for the cost of the care home. For more information about assessments, see our guide:

Assessment and services from your local council in Scotland (guide number 50).

10 Challenging decisions made by the local council

If you are unhappy with any of the services you have received from your local council, you are entitled to raise a complaint with them. You can raise a complaint about, for example, the services or assistance you have received from the council, the care provided in a care home if the council are part-funding it, or the amount of money you are asked to contribute towards the cost of care.

If you have any concerns, in the first instance you may want to raise the issue informally with the individual or the manager of the service you have had contact with. If you feel unable to approach the individual concerned, or you are unhappy with their response, you may want to consider a formal complaint. All local councils have to have a formal complaints procedure in place.

Depending on the nature of the complaint you may also be entitled to raise the issue with SCSWIS (tel.: 0845 600 9527; www.scswis.com) which regulates and inspects social care in Scotland. They can investigate any complaint which relates to the National Care Standards in Scotland. You, or a relative or carer, can contact SCSWIS at any time and you do not have to have previously raised your complaint directly with the service you are unhappy with, for example, social work or the care home. It may be appropriate though to give them a chance to respond first if you feel able to do this and if it is appropriate to do so. It may not be appropriate to delay contacting external agencies, such as SCSWIS, social work or the police if, for example, the complaint relates to abuse.

You may also find it useful to seek the assistance of an independent

advocate if you find the prospect of making a complaint daunting and/or you feel unable to voice your concerns. An independent advocate will be able to help you to voice your concerns or represent your views to the other people involved in your care to ensure that your rights are protected. To find an independent advocate in Scotland, contact the Scottish Independent Advocacy Alliance (tel.: 0131 260 5380; www.siaa.org.uk). You may also want to contact your local Citizens Advice Scotland office (www.cas.org.uk) as they may have an Independent Advice and Support Service (IASS) that can help with complaints.

For further information about advocacy and making a complaint to the council, see our guides:

Complaints about community care and NHS services in Scotland (guide number 54);

and

Independent Advocacy (guide number 25).

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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