



advice and support for older age

**Independent
Age**

Factsheet

Paying care home top-up fees

This factsheet explains when you or someone else – such as a relative, friend or charity – might have to pay a ‘top-up’ fee for you to stay in the care home of your choice. These rules apply if your place in a care home is being funded partly or fully by your local council.

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Independent Age provides advice to help people claim benefits, access social care and stay independent at home. Our local volunteers provide friendship visits and calls for lonely older people. To find out how Independent Age can help you, call us FREE on **0800 319 6789** or visit **independentage.org**



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The information in this factsheet applies to England only. If you're in Wales, contact Age Cymru (0800 022 3444, agecymru.org.uk) for information and advice. In Scotland, contact Age Scotland (0800 470 8090, agescotland.org.uk). In Northern Ireland, contact Age NI (0808 808 7575, ageni.org).

1. If you're thinking about moving into a care home

It's important to contact your local council before you make any decisions. They can arrange a care needs assessment to work out what kind of support you need, and whether a care home is your best option. See our factsheet **Assessment and care services from your local council** for more information (0800 319 6789, independentage.org).

The assessment will record all of your care needs, but they may not all qualify for help from the council. The care needs that do qualify are known as your 'eligible needs'.

If the council agrees you need to move into a care home, you should then be given a financial assessment to see if the council should pay some or all of your care home fees. If you have complex health and care needs, you may also be assessed for NHS Continuing Healthcare, to see if the NHS should pay for your care.

Our factsheet **Paying care home fees** has detailed information about when the council or NHS will fund your place in a care home (0800 319 6789, independentage.org).

2. What are top-up fees?

The council will work out the total amount it thinks your care should cost, based on the level and type of support you need. This is called a personal budget. The council won't necessarily pay all or any of this amount – you may have to contribute towards the fees. Your financial assessment will work this out.

If your local council is paying some or all of your care home fees, they will give you details of care homes which accept the amount of money in your personal budget. The council must provide you with at least one choice of care home that meets your care needs within your personal budget, and has a place available.

If you prefer a more expensive care home to the ones the council has offered you, you should still be able to move there if someone will pay the difference. This is a top-up fee.

3. Who can pay top-up fees?

Generally, it must be a third party – ie not you or the council – which pays the top-up fees. This could be a friend, a relative or a charity. You can't pay your own top-up fee except in one of the following circumstances:

- you have entered into a 12-week property disregard period. This means the council can't take the value of your home into account when calculating how much you should pay towards your fees for the first 12 weeks after your permanent move to a care home. During this time, you can pay your own top-up fees.
- you have a deferred payment agreement with the council – where the council will pay part of your care home fees as a loan and get the money back once your property has been sold at a later date.
- your accommodation is being provided under the Mental Health Act, in certain circumstances.

For more information about the 12-week property disregard and deferred payments, see our factsheet **Paying care home fees** (0800 319 6789, independentage.org).

The council will need to be confident that you or the third party can afford to pay a top-up fee as well as any contribution you already need to make towards the cost of your care. You will need to sign a written agreement with the council, so it's important to be sure that you can keep paying the top-up fee in the long-term.

The government plans to lift restrictions in April 2020, allowing more people to pay their own top-up fees if they can afford to. Remember, if the council is paying towards your care, you'll already be contributing most of your income and savings towards your care, so it's unlikely you'll be able to afford this.

4. When could you be asked for a top-up fee?

The total amount the council thinks your care should cost – including what the council pays and any contribution you may have to make – is called your personal budget. You should only need to pay a top-up fee if you choose a home that is more expensive than this amount.

Choosing a care home

Don't presume that all the homes advertised on the council's list or website will offer a place within your personal budget. The council should be able to tell you which homes have contracts with the council, and are charging an amount within your personal budget.

However, if you find a care home that is not contracted with the council you should still be able to move there as long as it meets the following four conditions:

- It's suitable for the type of care you need, as identified in your care needs assessment.
- There is a room available. However, the council should be willing to consider making temporary arrangements in another care home while you wait for a vacancy.
- The home will agree to the council's contractual conditions. This may include payment arrangements, review and monitoring of how the service meets certain standards, record keeping, information sharing, and insurance.
- The home doesn't cost more than your personal budget.

If your chosen home costs more than the council is willing to pay

This is when you may need to arrange top-up fees. However, before asking for a top-up, the council must be able to show that:

- there is another care home in the area that can meet your needs for the amount the council thinks is reasonable to pay (your personal budget), and
- a place is currently available in the home they have found.

Only after this do you need to arrange a top-up to go into your chosen home.

An example

Say the council has calculated that £600 a week is needed to meet your needs in a care home. There are two care homes in the area, which have a place available and are equally able to meet your assessed care needs. The first care home has fairly small rooms and the second home has larger rooms. The first care home costs £600 a week, but the second home costs £650 a week. If you choose the second home with larger rooms, your local council would be within their rights to ask for a top-up fee to cover the additional £50 a week. The only way to challenge this would be if you could show that the first care home at £600 didn't meet your eligible care needs (as set out in your care and support plan).

If the only care home available to meet your needs was the second care home, then the council would need to increase its standard rate to £650. They would not be able to ask for a top-up fee.

If you were paying all your care home fees, but your money is running out

If you're already living in a care home and paying your own fees, and your capital falls below £23,250, you will qualify for some help from your council to pay the fees.

However, it may be that your care home charges more than your personal budget – the amount the council thinks is required to meet your care needs.

If this is the case, and there are other care homes available which are less expensive, the council may ask you to move to a cheaper home, or to pay a top-up fee so that you can stay in your chosen care home. Before asking for a top-up, the council must carry out a new assessment of your needs and consider the impact of moving to another home on your health and wellbeing.

This may require a referral for a health assessment from a GP or other health professional. If the assessment shows that moving to another home is likely to have a serious impact on you, the council may increase your personal budget and not ask for a top-up fee.

Is your personal budget realistic?

Your council should not set your personal budget amount so low that it means that a top-up is needed to cover your eligible care needs. It should only ask for a top-up if the care home you want to go to genuinely costs more than the one they have offered, which can also meet all your assessed needs. Councils should pay a realistic amount to provide you with a suitable placement to meet your eligible care needs, as stated in your care needs assessment. The personal budget they set for you must be calculated with reference to the actual cost of meeting your care needs in the area you're moving to.

5. When the council should consider increasing your personal budget for care home fees

Your care needs assessment should include not only your physical care needs, but also your mental, psychological, emotional, social, religious and cultural needs. This can include your need to maintain family relationships and links with friends.

This means that during your assessment, it's very important that your additional or specific care needs are identified and recorded as 'essential needs', not just personal preferences, so your personal budget can be calculated accurately. For example, the council may increase the amount it is prepared to pay if:

- you need to move to a more expensive part of the country (eg to be nearer to family or return to where you grew up)
- the cost of your care is higher because of your particular care needs. For instance, if your first language isn't English it may be reasonable for your council to pay more for a care home where your first language is spoken
- 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, which can only be provided in specific homes.

An example

If you have lived in a small country village all your life but local care homes are more expensive than those in the county town some distance away, it may be unreasonable for a council

to limit its funding to only pay for a care home in the town. It would mean moving away from family and friends who are important to you. It may be appropriate for your council to fund your place in a care home in your village, as long as it can meet all your other assessed care needs.

To do...

Make it clear if you have any particular needs you want the council to take into account during your care needs assessment.

If any of your needs haven't been included as an essential part of your care needs assessment, you may want to request a review of your assessment. See our factsheet **Assessment and care services from your local council** (0800 319 6789, independentage.org) for more information.

If you feel that your council funding isn't enough to allow you to choose a care home which meets your assessed needs, you could consider getting legal advice and/or making a complaint (see chapter 7). Call the Independent Age Helpline (0800 319 6789) to arrange to speak to an adviser.

6. If you're thinking of paying a top-up fee

This section is for people who will be responsible for paying a top-up fee. You might be paying your own top-up fee in specific circumstances (see chapter 3) or a relative or friend may have asked you to pay a top-up fee for them.

You or your friends or family shouldn't be pressured into paying top-up fees. Before paying top-ups fees, it's important to make sure that the council is offering a reasonable amount to buy the care required.

If you have agreed to pay a third party top-up towards someone else's care home fees, you'll be asked to sign a contract with the council or sometimes the care home. The contract won't involve the person moving to the care home.

Good to know

Although you can ask to pay top-up fees directly to the care home, government guidance suggests you arrange the contract with the council. The council should then meet the full cost of the care home fees and invoice the resident for their contribution, and invoice you for any top-up fee separately. Either way, the council remains responsible for paying the care home.

If you're paying your own top-up fee (see chapter 3), this can be added to the amount that you have to pay towards your fees as worked out during your financial assessment.

What the council must do

The council must make sure you have enough information to make an informed decision about paying for your care (such as understanding the consequences if you don't keep up with top-up payments). The council must be satisfied that you're willing

and able to pay the top-up fee for as long as it is needed. They should also give you a written agreement to explain:

- how much the top-up payments will be
- the frequency of payments and who they are paid to
- how often they will be reviewed
- how (or if) the council will share the costs with you if the care home puts up its fees in the future
- what might happen if you can no longer afford the top-up fee (see below).

Good to know

Anyone paying a top-up fee can ask for a review of the top-up arrangement at any time, and the council should always review the arrangement once a year.

What happens if I can no longer afford to pay a top-up fee?

If you or a family member are no longer able to pay a top-up fee, the council will have to carry out a new care needs assessment before deciding what to do.

They won't be able simply to move you to a cheaper care home to resolve the need for the top-up fee. First, they would need to consider the impact this would have on your wellbeing, and whether the alternative home could meet all your care needs. In the meantime, the council would be responsible for covering the fees, but it may still recover the outstanding top-up fees from you at a later date.

7. Challenging a request for a top-up fee

If the council is refusing to increase your personal budget, even if your choice of care home is based on your eligible needs, or you feel that the council is unreasonably asking you to move to a cheaper care home, you can challenge the decision.

Complaining to the council

Start by trying 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 eligible needs. Make sure that this information is included in your care needs assessment and care and support plan and explain why you feel your council should pay for this care.

If you can't resolve matters informally and if judicial review is not an option (see below), you may need to make a formal complaint to the council. For more information, see our factsheet **Complaints about care and health services** (0800 319 6789, independentage.org).

Good to know

There may be situations when you don't want to try and resolve the problem informally first. This is because there is a time limit for certain legal challenges such as judicial review (within three months of the date of the council decision).

Judicial review

This is a process of asking a court to rule on the lawfulness of a decision by a public body such as the council. To go down this route, you would need to get expert legal advice as soon as

possible, about whether your case is suitable for judicial review and whether you can get legal aid. In some cases, this may be a more appropriate and effective route than making an informal or formal complaint.

Contact Independent Age to discuss your options, or see our factsheet **Complaints about care and health services** for more information (0800 319 6789, independentage.org).

Legal advice

You may want to get legal advice. Getting legal advice can be expensive, so you could contact Civil Legal Advice (0345 345 4345, gov.uk/civil-legal-advice) to find out whether you would qualify for legal aid. They can also give you details of other organisations or solicitors specialising in community care law. (0345 345 4345, gov.uk/civil-legal-advice).

You can also find legal specialists through the Law Society (solicitors.lawsociety.org.uk, 020 7320 5650).

This factsheet has been put together by Independent Age's expert advisers. It is not a full explanation of the law and is aimed at people aged over 60.

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